
Appeal Decision

Site visit made on 30 August 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 05 September 2023

Appeal Ref: APP/A5270/X/22/3304371

2 Strelley Way, Acton, London W3 7AR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Laurence Spear against the decision of the Council of the London Borough of Ealing.
 - The application Ref 221441CPL dated 31 March 2022, was refused by a notice dated 19 May 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as building works to construct a masonry garden building.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. Section 192(2) of the Town and Country Planning Act, 1990, as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a certificate of lawful use of development (LDC) was well founded.

Reasons

3. The proposed development is a single storey detached building for use as a games room/gym and home office within the rear garden of No 2 Strelley Way which is a semi-detached dwelling. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), subject to the restrictions set out in E.1, E.2 and E.3. However, the

Council does not consider that the proposed building benefits from the aforementioned rights as the proposed development by reasons of its large internal floor area and proposed use would not be incidental to the enjoyment of the main dwellinghouse as such.

4. E.4 of the GPDO says that for the purposes of Class E, Part 1 “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance¹ advises the rules also allow, subject to conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include garden sheds, other storage buildings, garages, and garden decking if they can be properly described as having a purpose incidental to the enjoyment of the house.
5. It has been established in the courts that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use. The use of the building should be subordinate to the use of the house as a dwellinghouse.
6. The appellant says the building would accommodate a games and gym area and a home office. A small toilet/shower room is also shown on the plans. The appeal submission includes photographs of the appellant’s home, including the garage and greenhouse. The photographs show, and observations on my site visit confirmed, that the living room is currently taken up by a full sized pool table, the kitchen area utilised for home working, the garage used for gym equipment/storage and the greenhouse for storage of garden tools. The appellant has two young children and states that he needs to reclaim his kitchen and living area for his family. The proposed outbuilding would enable him to have a quiet working space as well as relocate the pool table and gym equipment so that the house and garage can be used for family living and storage.
7. The existing dwelling is a modest semi-detached dwelling which has a large rear garden. Although the proposed outbuilding would have a large footprint, it would be single storey, and its overall floor area would be significantly less than that of the existing dwelling. Furthermore, when taking the footprint of the proposed outbuilding into consideration with the area covered by the dwelling’s existing rear extension, garage and greenhouse, those developments would occupy only just over a quarter of the original garden/open space around the dwelling. I therefore consider that the outbuilding would be physically and visually subordinate to the existing dwelling.
8. In terms of use, the outbuilding would accommodate the existing pool table and gym equipment which is currently taking up space in the existing dwelling and garage. The utilisation of the proposed outbuilding for the re-location of those items and its intended use would be clearly incidental to the use of the

¹ Permitted development rights for householders: technical guidance, updated September 2019.

dwellinghouse as such. Furthermore, with more employees being encouraged to work from home, it is not unusual for an outbuilding to also be used as a small home office, particularly when there is insufficient space for a separate office within the existing property. It is proposed to site the outbuilding at the end of the garden, some distance from the house. To support its intended use it would therefore be convenient for a toilet/shower to be provided within the building.

9. From the evidence before me, there is clear justification for an additional building of the size and layout proposed, and for the purposes described. I am satisfied that the building is genuinely and reasonably required for purposes which would be incidental and subordinate to the use of the house as a dwellinghouse.

Conclusion

10. The totality of the evidence presented demonstrates that the proposal satisfies the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it is permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E of the GPDO.
11. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of building works to construct a masonry garden building was not well-founded and the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 March 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed garden building is for a purpose incidental to the dwellinghouse, as such. The proposed garden building is "permitted development" falling within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3 (1) of that Order.

Signed

Elizabeth Pleasant

INSPECTOR

Date

Reference: APP/A5270/X/22/3304371

First Schedule

Garden building (as shown on Drawing No: 1018 AL(04)1101 Rev 01, dated 31.03.2022, Scale 1:50)

Second Schedule

Land at 2 Strelley Way, Acton, London W3 7AR

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Elizabeth Pleasant BSC (Hons) DipTP MRTPI

Land at: 2 Strelley Way, Acton, London W3 7AR

Reference: APP/A5270/X/22/3304371

Scale: Not to Scale

