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Town Planning Consultancy

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Our ref: CWA/CMW/pl/1448

Date: 14th September 2023

London Borough of Haringey
Planning, Regeneration & Economy,
Level 6, River Park House,
225 High Road,
London N22 8HQ.

VIA THE PLANNING PORTAL ONLY

Dear Sir or Madam,

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
TOWN & COUNTRY PLANNING (GPD) ORDER 2015 (AS AMENDED)
SITE AT 2 WOODSIDE AVENUE, LONDON N6 4SS
LAWFUL DEVELOPMENT CERTIFICATE APPLICATION FOR PROPOSED WORKS
PLANNING PORTAL REF: PP-12458808

We refer to the above site, and to the application for a Lawful Development Certificate (LDC) in respect of the *'proposed demolition of existing garage, erection of a detached outbuilding for incidental use as a single garage, cycle store/workshop, gym, and garden equipment store, and for associated alterations to the boundary enclosure and garage access on Lanchester Road'*.

In addition to the application form and this covering letter, the following documentation is submitted:-

- Site location plan no. 585-LOC-P1;
- Existing site plan no. 585-106-P1;
- Proposed drawing nos. 585-100-P2-SK07, 585-101-P2-SK02, 585-102-P2-SK02, 585-103-P2-SK03, 585-104-P2-SK02, and 585-105-P2-SK02; and
- Prior Approval HGY/2022/2340 (for demolition of existing garage).

In assessing this application, the LPA is requested to note the following:-

The Application Site

The application site is located on the south-east side of Woodside, at the junction with Lanchester Road. The site is occupied by a substantial detached, two storey single dwellinghouse (Use Class C3) ("the Dwellinghouse") which has been extended to each side, to the rear, and at roof level.

The site includes a front forecourt with carriage drive, and a rear garden. A detached garage/store, accessed from Lanchester Road, is located at the foot of rear garden.

The application site is not located within a conservation area, and is not subject to an Article IV Direction. There are no conditions attached to implemented planning permissions which remove or limit permitted development rights.

Relevant Planning History

Prior Approval was granted on 21st September 2022 under reference HGY/2022/2340 for the demolition of the garage. Prior Approval was required because the volume of the garage exceeds 50 cubic metres.

An LDC application for the proposed '*demolition of existing garage, erection of detached outbuilding for incidental use as a double garage, home office and gym, and associated alterations to boundary enclosure and garage access on Lanchester Road*' was refused on 23rd March 2023 ("the Refused Scheme"). The reason for refusal was as follows:-

'In pursuance of their powers under the above Acts and Order the London Borough of Haringey as local planning Authority hereby CERTIFY that the above proposal described by the applicant does not constitute PERMITTED DEVELOPMENT and is therefore UNLAWFUL. This is because on balance of probabilities the intended outbuilding and the facilities within it are of such a scale in comparison with the current dwellinghouse, as already significantly extended, to be viewed to be required for incidental purposes and as such do not fall within the parameters of Class E of Part 1 of Schedule 2 to the GPDO.'

The Proposal

The applicant proposes, under Class E of Part 1 to Schedule 2 of the GPDO 2015, the construction of a single storey, detached outbuilding ("the Outbuilding") for incidental use associated with the Dwellinghouse. The Outbuilding would replace the existing garage/store which would be demolished pursuant to Prior Approval HGY/2022/2340.

The Outbuilding, which would be located in the rear part of the Dwellinghouse's rear garden, would be used by the applicant and her family as a single garage, cycle store/workshop, gym, and garden equipment store. The Outbuilding would also contain a toilet.

The access to the garage element of the proposed Outbuilding would require alterations to a short section of the means of enclosure along the Lanchester Road frontage, and an adjustment to the position of the existing dropped kerb.

The Proposed Outbuilding - Compliance with Class E of Part 1 to Schedule 2 of the GPDO 2015 (as amended)

Permitted Development

The initial qualifying criteria for permitted development under Class E are that the proposed building should be (i) within the curtilage of the Dwellinghouse, (ii) used for purposes which are incidental to the enjoyment of the Dwellinghouse, and (iii) reasonably required for such purposes. These matters are considered below.

Location within the curtilage

The Outbuilding would be located entirely within the curtilage of the Dwellinghouse.

Incidental Use

The Outbuilding would be used solely for purposes incidental to the enjoyment of the Dwellinghouse, specifically as a replacement single garage, and as a cycle store/workshop, gym and garden equipment store. A WC would also be provided. The Outbuilding would not provide self-contained residential accommodation or primary living accommodation such as a bedroom, bathroom or kitchen.

Requirement for the Outbuilding

The LPA objected to the Refused Scheme on the basis that the need for the scale of incidental facilities within the proposed Outbuilding, in comparison to the size of the extended Dwellinghouse, had not been justified. First, it should be noted that the current amended application proposes an Outbuilding of a significantly reduced size in comparison to the Refused Scheme, specifically 46 square metres in comparison to 78.5 square metres. The Outbuilding would clearly be of a subordinate size to the Dwellinghouse.

With regard to relevant case law (*Emin*), it is necessary for the applicant to show that what is proposed is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. In this context, each element of the proposed Outbuilding is considered below.

In relation to the proposed single garage, it should be noted that although the Dwellinghouse is served by a carriage drive/forecourt, there is currently no useable garage suitable for the secure accommodation of vehicles. The existing garage/store building at the rear of the site, which would be demolished, is difficult to access and of inadequate size. The applicant's household currently has three cars in regular use including one EV for which a charging point is provided on the forecourt. One of the other vehicles will shortly be replaced by a further EV for which a charging point will be provided in the garage section of the proposed Outbuilding. A single, secure and covered garage space for a vehicle is therefore reasonably required.

The proposed cycle store/workshop is required to store the household's three 'high-end' cycles. Other cycles will be acquired to serve the needs of the large and growing family, all of whom are keen cyclists. There is no existing secure and suitable location for the storage and maintenance of cycles, and such storage needs to be provided outside the confines of the Dwellinghouse so that mud and debris are not brought into the applicant's home.

The proposed gym is to be used by all members of the family. There is no space available in the Dwellinghouse to provide a well-equipped domestic gym, and such facilities are nowadays commonly provided within domestic outbuildings. The proposed gym, which has been substantially reduced in size in comparison to the Refused Scheme, will accommodate a range of specialist equipment. The Outbuilding will also include a small toilet.

The proposed garden equipment store will comprise a small part of the proposed Outbuilding, and will be a similar size and function to a garden shed. It will have direct access to the garden, and will be used to store gardening tools and equipment, such as a lawnmower, along with garden sports equipment.

The access corridor to the various areas described above is of the minimum size required, and will be served by a door facing the garden.

The applicant has provided precise and unambiguous information on how the proposed Outbuilding would be used for the required incidental purposes. For the reasons set out above, the accommodation within the proposed Outbuilding is considered to be reasonably required to meet the needs of the applicant and her large family.

Although it is acknowledged that each case will need to be determined on its individual merits and particular circumstances, it is relevant to have regard to other LDC decisions where similar considerations have arisen. Particular attention is drawn to the following two allowed appeals:-

The first case relates to a site at The Old Rectory, High Street, Mawdesley (PINS ref: 3291325) where a proposed outbuilding would serve what the Inspector described as a '*large two storey dwelling with a large residential curtilage*'. The proposal was for a very substantial outbuilding containing a store for 6 bikes, a utility vehicle, and a sailing boat & trailer, along with 2 offices, a garage for 5 vehicles along with maintenance facilities, a store for garden maintenance equipment, and potting shed and green house. The Inspector noted the Council's objection that some of the proposed uses could potentially be accommodated within the dwelling but dismissed this concern on the basis that each use would be functionally linked to and be dependent upon the primary residential use of the site.

A further appeal case relates to a site at Channocks Lane, Harlow (PINS ref: 3134681) which concerned a proposed outbuilding with an area of 155 sqm. containing a triple garage (44 sqm.), a self-contained store (11 sqm.), a gym (39 sqm.), a games room (31 sqm.), and a shower room and WC (5 sqm.), along with a hall. The dwelling was already served by a double garage (which would be demolished), and that the proposed outbuilding would be larger than the combined footprint of the existing dwelling and double garage. Furthermore, the gym, which was considerably larger than that proposed by the applicant at 2 Woodside Avenue, would have six large items of equipment. This was therefore a proposal which contained very similar uses to that proposed at 2 Woodside Avenue albeit within an outbuilding of approximately twice the size.

Copies of the above appeal decisions are attached to this letter.

Limitations

Under Class E, the provision within the curtilage of a dwellinghouse of any building for a purpose incidental to the enjoyment of the dwellinghouse is permitted development subject to compliance with the limitations set out under paragraphs E.1, E.2 and E.3, and to the interpretation of the class under E.4.

Under paragraph **E.1**, the construction of the proposed Outbuilding would not conflict with sub-paragraphs (a) to (k) as follows:-

- (a) The lawful status of the Dwellinghouse does not derive from a change of use under Class G, M, MA, N, P, PA or Q of Part 3 of the Schedule;
- (b) As a result of the proposed works, the total area of ground covered by buildings, enclosures and containers within the curtilage of the dwellinghouse (other than the original Dwellinghouse) would not exceed 50% of the total area of the curtilage excluding the ground area of the original Dwellinghouse;

- (c) No part of the Outbuilding would be situated on land forward of a wall forming the principal elevation of the Dwellinghouse;
- (d) The Outbuilding would have a single storey;
- (e) The Outbuilding would not be located within 2 metres of the boundary of the curtilage of the Dwellinghouse, and the height of its dual-pitched roof would not exceed 4 metres (as measured from the highest part of the surface of the ground adjacent to the proposed outbuilding);
- (f) The height of the eaves of the Outbuilding would not exceed 2.5 metres;
- (g) The Outbuilding would not be located within the curtilage of a listed building;
- (h) The proposal would not include the construction or provision of a verandah, balcony or raised platform;
- (i) The proposal does not relate to a dwelling or a microwave antenna;
- (j) The proposal does not relate to a container with a capacity in excess of 3,500 litres; and
- (k) The Dwellinghouse was not built under Part 20 of Schedule 2.

Under paragraph E.2, the application site is not located within an AONB, the Broads, a National Park or a World Heritage Site. Under paragraph E.3, the application site is not Article 2(3) land. Paragraph E.4 is not relevant to the proposed use of the Outbuilding.

Associated works

The proposal also includes the demolition of the existing detached garage in the rear part of the site. The demolition would be lawful under Prior Approval HGY/2022/2340 granted on 21st September 2022.

The proposal also comprises alterations to the existing means of enclosure along a short stretch of the Lanchester Road frontage. A section of the existing tall metal railings with gates would be removed, and two lengths of lower timber fencing would be erected each side of the adjusted location of the garage access. Short sections of timber fencing would also be erected adjacent to each corner of the elevation of the Outbuilding that would front Lanchester Road. These works would be lawful under Class A of Part 2 to Schedule 2 of the GPDO 2015 (alteration of an existing means of enclosure). The highway authority would be requested to adjust the position of the existing dropped kerb.

For the above reasons, it is considered that the proposal would be lawful in planning terms.

We therefore look forward to the early and favourable determination of this LDC application. In the

meantime, if you require any further information, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'CWA'.

CHRISTOPHER WICKHAM ASSOCIATES

c.c. Ms Sonia Farhadi

The following documents are appended to this letter:-

1. Appeal decision APP/D2320/X/22/3291325
2. Appeal decision APP/J1915/X/15/3134681

Appeal Decision

Site visit made on 29 June 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/D2320/X/22/3291325

The Old Rectory, High Street, Mawdesley L40 3TD

- 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 Richard Ainscough against the decision of Chorley Borough Council.
 - The application Ref 21/00981/CLPUD, dated 10 August 2021, was refused by notice dated 17 November 2021.
 - 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 the creation of a single storey outbuilding for incidental use associated with an existing dwellinghouse.
-

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. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).

Reasons

3. It is clear from the Council's reason for refusal and associated documentation that there is no contention that the building in question does not meet all the conditions set out in paragraph E.1 of Class E and, indeed, I have no reason to bring this into question. The Council's decision is based on their claim that the building would be of an unreasonable size when considered against the size of the existing dwellinghouse and as a matter of fact and degree would not be commensurate to the existing property in terms of size and scale. This is disputed by the appellant.
4. The Planning Practice Guidance makes it clear that the applicant is responsible for submitting sufficient information to support an application. It goes on to state that in the case for a proposed development such as this the applicant needs to describe the proposal with sufficient clarity and precision to enable the

local planning authority to understand exactly what is proposed and what the development involves. The key question for the decision maker is whether the development had commenced on the application date, would it have been lawful for planning purposes.

5. The host dwelling is a large two storey dwelling with a large residential curtilage. To the east of the main dwellinghouse there is a tennis court area and a new outbuilding is currently being constructed. There are other outbuildings attached to the dwellinghouse including a kennel and existing double garage/car port.
6. The proposed plans show a single storey outbuilding which would accommodate a range of functions including the following:
 - An open store for six bicycles, utility vehicle, sailing boat and trailer and four motor cycles;
 - Two offices with space for associated furniture, storage and equipment;
 - Garage for a collection of five racing and seasonal use vehicles, vehicle lift, workshop area, tool storage and racing car parts storage;
 - Machine storage for a range of garden and maintenance equipment; and
 - Potting shed and green house.
7. The appellant contends that the proposed uses would be incidental to the enjoyment of the dwellinghouse in land use planning terms. The Council has also stated that the activities indicated on the submitted plans fall into categories that, individually, may be acceptable as incidental to the enjoyment of the dwellinghouse. However, in the Council's judgement, when taken together the scale of the building would be of concern. The reason for refusal also identifies the footprint of the proposed building which would be greater than the footprint of the main house and would not be commensurate to it in terms of size and scale.
8. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the *Emin* case¹ it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In the *Emin* case it was held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes.
9. I have also taken account of the appeal decision² to which my attention has been drawn and, in particular, the word "incidental" in the GPDO connotes an "element of subordination of the proposed building in land use terms". The Technical Guidance advises that a purpose incidental to a dwellinghouse would not cover normal residential uses such as separate self-contained

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

² APP/P0119/X/12/2183050

accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. An outbuilding that is 'incidental' would contain uses that cannot exist without being functionally linked to and dependent on a primary residential use. Examples of this include storage and hobby rooms or other recreational uses.

10. The range of evidence before me illustrates that in cases such as this it is very much a matter of fact and degree based on the very specific circumstances of each case. In addition, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of proposed activities and whether they would be subordinate to the main use of the dwellinghouse. There is nothing in the *Emin* judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Surely, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.
11. In this case the appellant presents that the space proposed is genuinely and reasonably required by him and necessary to accommodate its intended use. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse. In order for a building to be considered as permitted development all of it must be required for incidental purposes. In land use terms I see no reason why the proposed outbuilding is not required for incidental purposes and indeed the appellant's clear evidence is that it is reasonably required for incidental land use purposes. It would accommodate domestic-related storage, office space, garaging for the resident's vehicles, storage of machinery required for the management and maintenance of the substantial domestic curtilage and gardening-related uses.
12. Therefore, although I do not dispute that it is proposed to be a substantial outbuilding, there is certainly a clear element of subordination of the proposed building in land use terms. I have taken account of the Council's concerns that some of the uses could potentially be accommodated within the existing dwelling, but each of the uses, including the offices, would be functionally linked to and be dependent upon the primary residential use of the site. That is the key question in this case. I am satisfied that the proposed use of the outbuilding is incidental to the enjoyment of the dwellinghouse and consequently it falls within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

13. I conclude that based on the evidence before me and as a matter of planning judgement, the single storey outbuilding would be required in its entirety for incidental purposes. In addition, the size of the building would be commensurate with its proposed incidental uses and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.
14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the outbuilding was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A A Phillips

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 10 August 2021 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 single storey outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.

Signed

A A Phillips
INSPECTOR

Date: 18 July 2022

Reference: APP/D2320/X/22/3291325

First Schedule

Creation of a single storey outbuilding for incidental use associated with an existing dwellinghouse.

Second Schedule

Land at The Old Rectory, High Street, Mawdesley L40 3TD

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.



Plan

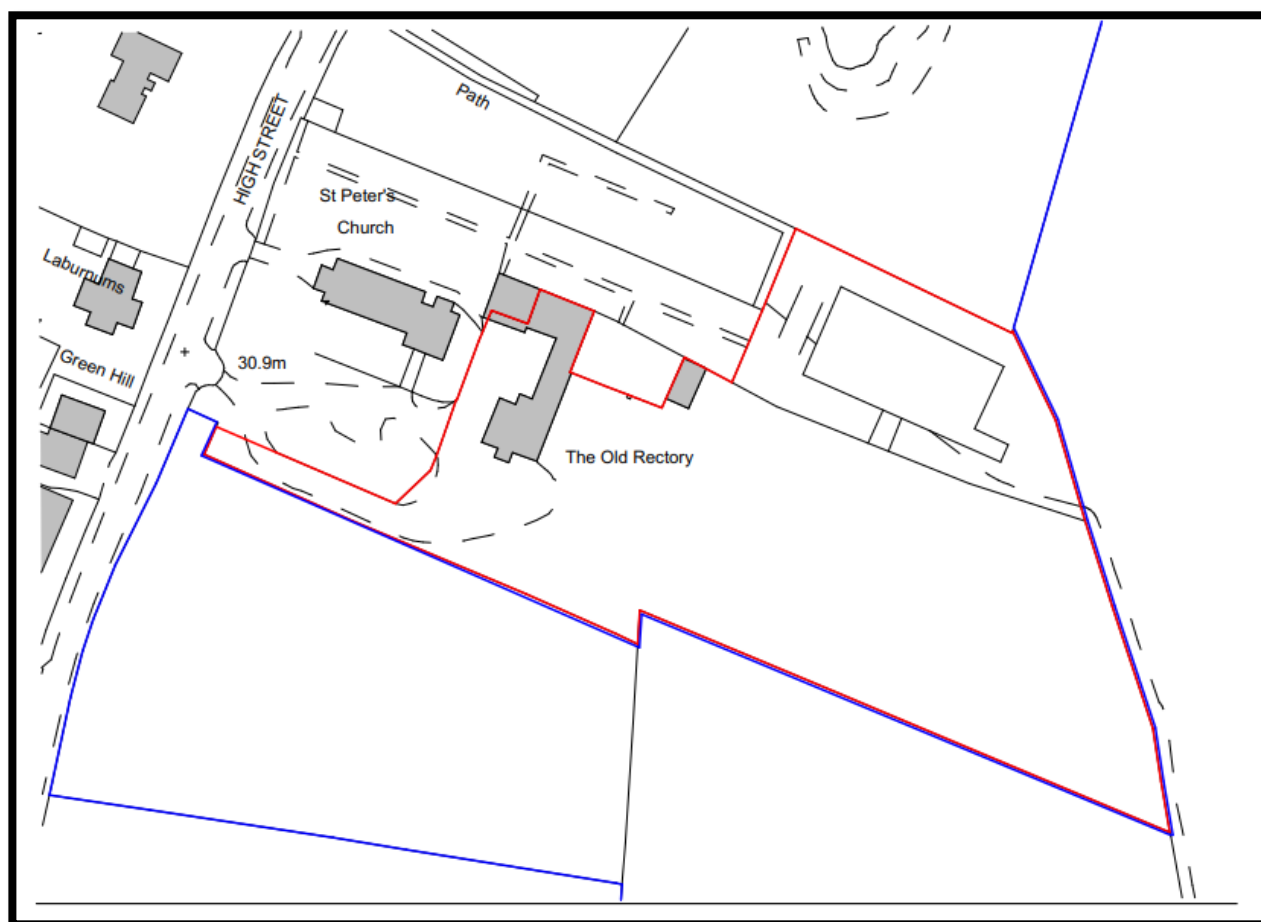
This is the plan referred to in the Lawful Development Certificate dated: 18 July 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

Land at The Old Rectory, High Street, Mawdesley L40 3TD

Reference: APP/D2320/X/22/3291325

Scale: Do not scale



Appeal Decision

Site visit made on 9 February 2016

by George Mapson DipTP DipLD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 March 2016

Appeal Ref: APP/J1915/X/15/3134681

15 Channocks Lane, Gilston, Harlow, Hertfordshire, CM20 2RL

- 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 S C Lloyd against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/1229/CLP, dated 10 June 2015, was refused by a notice dated 5 August 2015.
 - 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 *"Proposed outbuilding to create new triple garage& gym and games room"*.
-

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. An LDC appeal is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well-founded.

Background

The appeal site

3. No. 15 Channocks Lane is a detached, 2-storey, 3-bedroom house that is located in the open countryside. The plans that accompany the LDC application label the plot *'Channock's Farm Cottages.'*
4. The original house and its original, domestic curtilage are relatively modest in scale and appear to be long-established. They are positioned in one corner of a spacious plot of land that now serves as the garden to the property. A pitched roofed double garage occupies a central position on the frontage of the land, set back from the road.

The appeal proposal

5. The proposal is to replace the existing garage by a pitched roofed outbuilding measuring 26m wide, 5.8m deep and 4m high. On the western end there would be a triple garage and self-contained store. On the eastern end there would be rooms that are labelled *'gym'* and *'games room'*, and a shower room, all of which lead off a hall.

Reasons

The Council's reasons for refusing to grant a certificate

6. The reasons for refusal are:

The size and scale of the proposed building as shown on plan reference 11980-P002-A received 10 June 2015 cannot reasonably be considered as being incidental to the enjoyment of the dwellinghouse and would fail to comply with Class E, Part 1, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015.

The Council's position

7. The Council considers that, in this rural locality, the replacement of the existing double garage by a triple garage can reasonably be regarded as an incidental use. So too can a store of the size proposed, having regard to the size of the garden amenity space and the need to store gardening equipment, such as lawn mowers. The Council concedes that a gym, games room and shower room, for use after exercise, are also capable of being regarded as incidental uses.
8. The Council's concerns are firstly, about the proposed size of the gym (7.4m by 5.2m) and games room (6m by 5.2m); and secondly, about the need for the hall which gives access to these rooms. In the Council's view, the hall takes up a large proportion of the outbuilding and appears to serve no useful purpose.

The appellant's position

9. The appellant's agent considers that the Council has made a subjective judgment on the size and scale of the proposed outbuilding, without taking account of an appeal decision which granted a LDC for a very similar development at Marsh Lane, Stansted Abbots¹. That site is also within East Hertfordshire District and the scheme had virtually identical facilities to those of the appeal proposal.
10. On that occasion, the Council advanced similar arguments about the size of the accommodation proposed, and whether the outbuilding could be regarded as serving an incidental purpose, but these arguments were rejected by the Inspector. The Council has chosen not to contest the appellant's point about the similarities between the size, scale and facilities between that scheme and the appeal proposal, and has not sought to show differences between the two schemes.

Class E - determining 'a purpose incidental to the enjoyment of the dwellinghouse as such'

11. The Courts² have held that the test to be applied in cases such as this is whether the uses of the proposed building, when considered in the context of the 'planning unit', are intended to be, and will remain, ancillary or subordinate to the main use of the property as a dwellinghouse. It is correct to consider the nature and scale of that use in the context of whether it is required for a purpose incidental to the enjoyment of the dwellinghouse.
12. The word 'required' should be taken to mean '*reasonably required*'. It is therefore for the appellant to show that what is proposed - the floorspace attributed to each proposed use - is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.

¹ Appeal Ref APP/J1915/X/08/2088016 (Decision date 24 August 2009)

² See *Emin v Secretary of State for the Environment and Mid Sussex DC* [1989] JPL 909, and *Holding v First Secretary of State* [2004] JPL 1405. In *Emin*, the Court held that, in order to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. It is therefore necessary to ensure that they are incidental or conducive to the very condition of living in the dwellinghouse. In that connection the scale of those activities is obviously an important matter, because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such.

My assessment and conclusions

13. I can understand the Council's concerns about the size of the proposed outbuilding. With a footprint of 155sqm, it would be considerably larger than the combined footprint of the house and the existing garage and would add considerably to the amount of built development on this rural site.
14. Nevertheless, the Council is well aware that the issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding a LDC application or appeal.
15. The Council accepts that the land on which the outbuilding would be erected should be regarded as forming part of the curtilage of the dwellinghouse for the purposes of Schedule 2, Part 1 of the GPDO. The Council also accepts that all the conditions and limitations of Class E are met.
16. The decision turns on a 'fact-and-degree' judgment as to whether the outbuilding, and the accommodation that it would provide, would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. In fact, from the Council's perspective it turns specifically on whether a 'gym', 'games room' and 'hall' of the sizes proposed would be '*reasonably required*'.
17. From my reading of the decision on the Stansted Abbots appeal, it appears that the Council presented similar arguments about the size of a proposed '*gymnasium/games room*', as the space was labelled in that case. In allowing the appeal, and having regard to the evidence that was before him, the Inspector took the view that the room would not exceed what was reasonably required to accommodate the snooker table that was illustrated on the submitted plans and gymnasium equipment that the householder might wish to install.
18. On the plans before me, six large pieces of gymnasium equipment are shown within the room marked '*gym*'. There are no illustrations to show how the proposed games room would be used. However, in my experience, whatever illustrations appear on plans, the actual use of these spaces tends to fluctuate over time.
19. In the Stansted Abbots appeal the Inspector found nothing to indicate that the proposed use of the building would be anything other than genuinely incidental to the enjoyment of the dwellinghouse as such. In the absence of any evidence before me to suggest otherwise, I am bound to reach the same conclusion here.
20. In that appeal, the Inspector addressed the Council's concern that the outbuilding had the potential to be used as a separate single dwellinghouse. He pointed out, correctly, that this was a matter over which the Council would retain control. The same control would apply here.
21. On the evidence before me, I conclude that the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. It would therefore be permitted by Article 3(1) and Schedule 2, Part 1, Class E of the 2015 Order.

Conclusions

22. For the reasons given I conclude that the Council's refusal to grant a certificate was not well-founded and that the appeal should be allowed. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

George Mapson

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 10 June 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shaded grey 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:

Planning permission is granted by the provisions of section 58(1)(a) of the Town and Country Planning Act 1990 (as amended) and Article 3(1) and Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

George Mapson

INSPECTOR

Date **29 March 2016**

Reference: APP/J1915/X/15/3134681

First Schedule

Proposed outbuilding to create new triple garage & gym and games room.

Second Schedule

Land at 15 Channoeks Lane, Gilston, Harlow, Hertfordshire, CM20 2RL

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 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

Plan

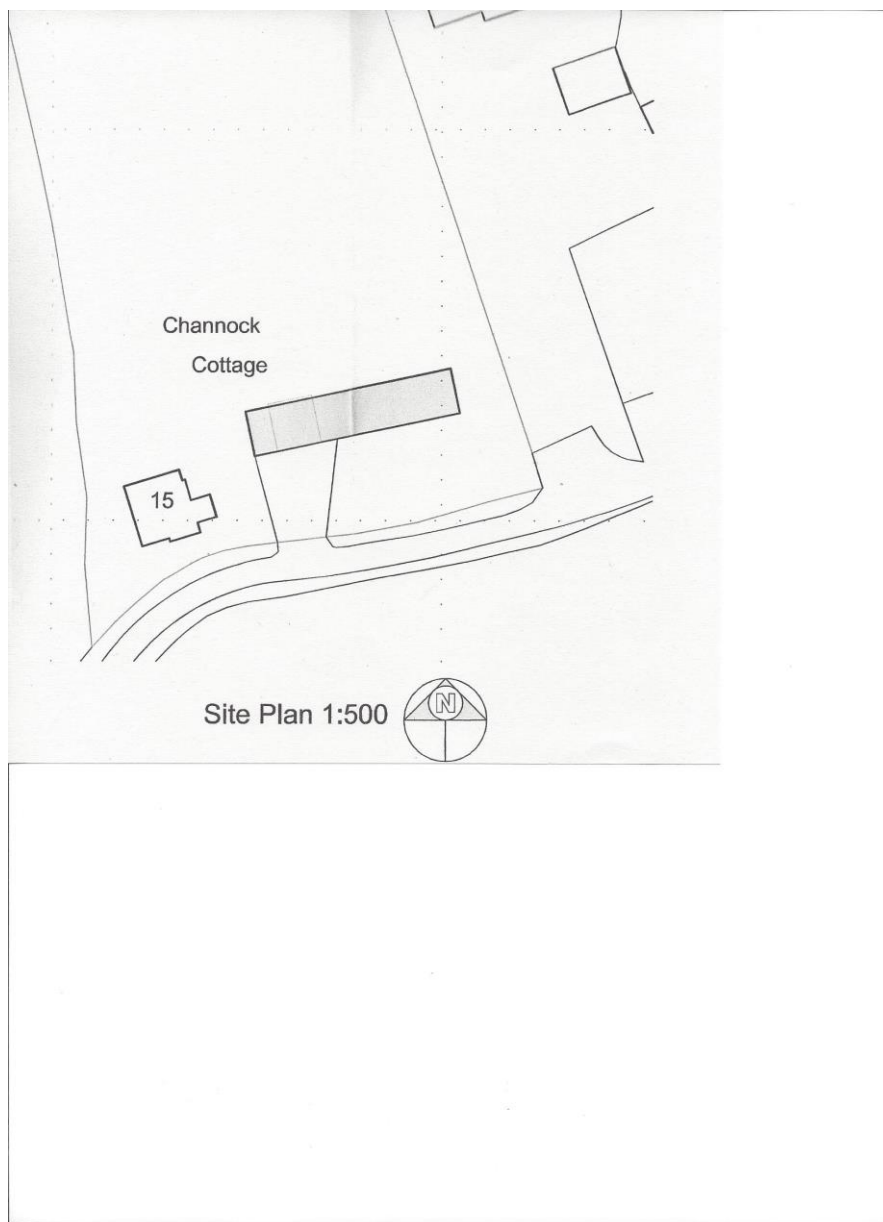
This is the plan referred to in the Lawful Development Certificate dated: **29 March 2016**

by George Mapson DipTP DipLD MRTPI

Land at: 15 Channocks Lane, Gilston, Harlow, Hertfordshire, CM20 2RL

Reference: APP/J1915/X/15/3134681

Scale: NTS



George Mapson
INSPECTOR