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# Appeal Decision

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

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

Decision date: 05 September 2017

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**Appeal Ref : APP/R5510/X/17/3170575**

**Land at 52 Harlington Road, Hillingdon, Uxbridge, Middlesex, UB8 3EX.**

- 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 P Gills against the decision of the Council of the London Borough of Hillingdon.
- The application ref 9995/APP/2017/272, dated 23 January 2017 was refused by notice dated 21 February 2017.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The proposed development for which a LDC is sought is single storey outbuilding to rear for use as a gym/office/store.

**Summary of Decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.**

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## Preliminary Matter

1. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

## Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

## Reasons

3. Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to specified limitations and conditions. The issue in dispute between the parties is whether the proposed outbuilding is for a purpose incidental to the enjoyment of the dwellinghouse. There is no argument that in all other respects Class E is met and I have no reason to conclude otherwise.

4. The proposed outbuilding would have a footprint larger than the footprint of the main dwelling. The plan submitted with the application shows the space partitioned into four rooms labelled respectively home gym, home office, home hobby room and home storage. In his supporting statement the Appellant describes his family needs for additional space for home working, fitness equipment and cake decoration and storage since moving from a larger property.
5. It is primarily for an occupier of a dwellinghouse to determine what incidental uses he/she wishes to enjoy subject to the objective test of reasonableness. In this case I am satisfied that the Appellant has provided adequate explanation for the proposed uses and that those uses may be regarded as reasonably required for incidental purposes. I have taken into account the relatively large size of the proposed outbuilding compared to the main dwelling but this factor is not determinative. On the particular facts of this case the size of the proposed outbuilding and layout comprising four partitioned rooms does not of itself suggest that use would not be required for genuinely incidental purposes.
6. The Council draw to my attention two appeal cases. Whether a building satisfies Class E is a matter of fact and degree dependent on the specific circumstances of each individual case. Whilst I recognise similarities between this case and the appeal decisions cited in that the proposed outbuilding is relatively large in size this factor is not conclusive. Furthermore, in the appeal decisions drawn to my attention by the Council the Appellants did not provide adequate explanation to demonstrate that the proposed buildings were reasonably required for incidental purposes. In contrast I find that in this case the Appellant has explained his intention and provided sufficient evidence to demonstrate that the proposed building is reasonably required for incidental purposes.
7. I therefore conclude on the balance of probabilities that the intended outbuilding was, at the time of the LDC application, required for purposes incidental to the enjoyment of the dwellinghouse as such. It benefits from permitted development rights and would not require planning permission.
8. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a LDC was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

### **Formal Decision**

9. 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.

*S. Prail*

**Inspector**



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## **LAWFUL DEVELOPMENT CERTIFICATE**

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

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

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**IT IS HEREBY CERTIFIED** that on 23 January 2017 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 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The operations described in the first schedule would be permitted development by virtue of Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

The development does not contravene the requirements of any enforcement notice in force.

*S. Prail*

INSPECTOR

Date: 05 September 2017

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### ***First Schedule***

Single storey outbuilding to rear for use as a gym/office/store as shown on drawing no. 2017-01-13.

### ***Second Schedule***

Land at 52 Harlington Road, Hillingdon, Uxbridge, Middlesex, UB8 3EX.

## **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 operation is only conclusively presumed where there has been no material change, before 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: 05 September 2017

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Not to Scale

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