



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:
Mr Karol Sieniuc

Proposal:
Demolition of existing garage and erection of outbuilding including a decking area to rear garden (Application for a Certificate of Lawful Development for an Existing Development)

Appeal Site:
31 St Edmunds Avenue, Ruislip

Our Ref:
Your Ref:

58245/APP/2021/4066
APP/R5510/X/22/3303062

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant a Certificate of Lawful development for the demolition of existing garage and to retain an erected outbuilding including a decking area to rear garden.
- 1.2 The LPA refused planning permission on 26.04.2022 for the following reason (as stated on the decision notice):
 1. The existing development does not constitute permitted development by virtue of the provisions of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) because it has not been demonstrated, on the balance of probabilities, that the size and function of the constructed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
 2. The existing development does not constitute permitted development by virtue of the provisions of E.1 (e) (ii) and (f), Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) because insufficient evidence has been provided to demonstrate that the constructed outbuilding does not have a maximum height and eaves height exceeding 2.5 metres.
 3. The existing development does not constitute permitted development by virtue of the provisions of E.1 (h), Class E and provision A.1 (k) (i), Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) because insufficient evidence has been provided to demonstrate that the decking area adjacent to the constructed outbuilding would not constitute as a raised platform.
- 1.3 The LPA's case is set out in the Planning Officer's delegated report, which should be read in conjunction with this statement. A copy of the delegated report has already been submitted to PINS with the Appeal Questionnaire.
- 1.4 This statement will not repeat the delegated report but will focus on addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

- 2.1 The Appellant's statement of case is set out to address each of the three reasons for refusal outlined in paragraph 1.2 above and justified by the LPA within the Planning Officer's delegated report already submitted to PINS. For ease of cross-reference in addressing the points raised by the Appellant the LPAs following comments will use similar headings.
- 2.2 The Council's Refusal No 1

This section of the Appellant's statement of case addresses the LPA's first reason for refusal whereby it was determined that it was not demonstrated, on the balance

of probability, that the outbuilding would be incidental to the enjoyment of the dwellinghouse.

- 2.3 The LPA does not dispute that the outbuilding would not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). This is confirmed within the Officer's delegated report. However, it is also noted that the provisions of Class E stipulate that an outbuilding is only permitted if the intended use is required for a purpose incidental to the enjoyment of the dwellinghouse.
- 2.4 Established case law confirms that in Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required'. The judgment in *Emin v Secretary of State for the Environment & Mid Sussex District Council* [1989] held that the physical size of an outbuilding, alone or in relation to a dwelling, may form part of an assessment but is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required to accommodate the proposed use. The LPAs decision and officer's report are consistent with this judgment. Reference is made to the scale of the outbuilding in relation to the existing house (being 65% of the original footprint) as part of the assessment to determine whether the proposed use of the outbuilding would be subordinate to the use of the house as a dwellinghouse.
- 2.5 In respect to the functions of the proposed outbuilding it is noted that the Appellant's statement of case provides explanations of their need for the outbuilding, and the scale of each constituent activity. It should be strongly noted that no such evidence was submitted at the application stage. Rather, given the large footprint of the outbuilding and very few details shown on the submitted plans (and none in the application form) it was not possible for the LPA to properly ascertain whether an outbuilding of this size was reasonably required or was disproportionately large. Therefore, based on the information available to the LPA at the application stage it was determined that the outbuilding was not permitted development as "it [had] not been demonstrated, on the balance of probabilities, that the size and function of the constructed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse".
- 2.6 The Appellant's statement of case also notes that the area of rear garden space would comply with local plan policy. This is noted, albeit not strictly relevant as this is an application for a Certificate of Lawfulness rather than a planning application.
- 2.7 The Appellant's statement of case also references a planning permission granted for a comparably sized outbuilding at No. 3 Edmunds Avenue which has a footprint of 60sqm compared to the proposed 56sqm outbuilding footprint (Ref 66891/APP/2022/594). This outbuilding was to accommodate a pool for hydrotherapy (which by nature would require a notable area) and was supported by (confidential) evidence to demonstrate its need and that the scale of the outbuilding was the minimum necessary size required. All planning considerations were assessed in the robust determination of that application. Nevertheless, a key difference between this referenced application and this one under appeal is that the proposal at No. 3 Edmunds Avenue was for planning permission (subject to planning policies and conditions rather than the GPDO) whereas this one is for a certificate of lawfulness. The determination of each of the applications is not

comparable. It is strongly refuted that the LPA has been inconsistent in its determination of applications.

2.8 Second Reason for Refusal

The Appellant's Statement of Case in this regard notes that as the submitted drawings demonstrate that the maximum height would be 2.5m then it is the Council's responsibility to verify these figures or they "must take them on face value".

- 2.9 This reason for refusal is discussed fully in the Officer's delegated report. Nevertheless, in essence, given that ground works have been carried out and that construction was carried out prior to submission, it is uncertain whether the existing ground level shown on the submitted drawings, is as a matter of fact and degree, the natural ground level of the site. It is also unknown whether separate engineering works has been required to construct the outbuilding. It should be noted that the ambiguity of the natural ground level applies to both the height of the outbuilding and the raised platform.
- 2.10 It is significant that the Appellant's statement of case provides photographic evidence that clearly demonstrates the height of the outbuilding exceeding 2.5m. This is shown on pages 9 and 10 of the Appellant's statement of case and provides evidence of the height of the outbuilding exceeding 2.53m.



Figure 1 Photo from appellant's statement of case showing the height of the outbuilding over 2.5m



Figure 2 Photo from appellant's statement of case showing height being measured. Given the angle of the grate from the current ground level on site the height is likely to exceed 2.54m

- 2.11 In respect to the assertion that the LPA should verify the original ground levels or take the drawings at face value, given that the outbuilding was substantially constructed it would be incorrect to approve a retrospective application based on ambiguity and uncertainty. Importantly the onus is on the applicant to prove on the balance of probability that the development or use is lawful.
- 2.12 It should be noted that revised drawings were requested and received during the assessment of the planning application as it was obvious that given the sloped terrain the originally submitted drawings were not accurate (with a contiguous flat roof outbuilding on a level, flat ground level). Therefore, opportunities were provided

to verify the accuracy of pre-existing and current ground levels and compliance with the GPDO. It is considered that the LPA acted reasonably but in the absence of appropriate evidence the application was refused.

2.13 Third Reason for Refusal

As noted in paragraph 2.9 above the original ground level ambiguities apply to the height of the raised decking as well as that of the outbuilding. This is discussed in the officer's delegated report.

3. Conclusion

- 4.1 For the reasons set out in the delegated report and this statement it is not considered that it has been demonstrated that the outbuilding at Number 31 St Edmunds Avenue constitutes permitted development. The Inspector is therefore respectfully requested to dismiss the appeal.