
Appeal Decision

Site visit made on 13 December 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 29 December 2016

Appeal Ref: APP/M5450/X/16/3158812
57 Crowshott Avenue, Stanmore HA7 1HR

- 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 Ms M Shah against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3224/16, dated 04 July 2016, was refused by notice dated 26 August 2016.
 - 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 development is sought is the erection of a single storey outbuilding in the rear garden.
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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. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuilding are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The proposal for which an LDC is sought is a single storey outbuilding in the rear garden of 57 Crowshott Avenue, a semi-detached dwelling in a suburban location. The plans indicate that it would be used partly as a gym and partly for storage and a toilet would be provided, which would be accessed from the garden. The garden is of reasonable proportions and the building would be located in the bottom corner of the garden, adjacent to the neighbouring property at Lamorna Grove.
4. Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) grants planning permission for 'any building or enclosure, swimming or other pool required for a purpose

incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'. Those 'permitted development rights' are subject to a number of conditions and restrictions, listed at paragraphs E.1 to E.3.

5. The Council do not dispute that the proposal would comply with the conditions and limitations listed at paragraphs E.1 to E.3 but dispute whether the proposed building would be 'incidental to the enjoyment of the dwellinghouse'. If the purpose of a building would not be incidental then it would fall outside the scope of the permitted development rights granted under Class E of the Order. More specifically, the Council does not dispute that the gym or store room would be 'incidental to the enjoyment of the dwellinghouse' but considers that the toilet would not be incidental but would amount to 'primary accommodation'. I understand that a lawful development certificate has recently been granted by the Council for a similar structure, without a toilet.
6. From the information before me I am satisfied that the outbuilding would comply with the conditions of paragraphs E.1 to E.3 in terms of its location and outward dimensions. I also concur that the indicated use as a gym and storage area would be incidental to the enjoyment of the dwellinghouse. In terms of the outdoor toilet, the Council has referred to advice within *Permitted Development Rights for Householders – Technical Guidance* (Department of Communities and Local Government, 2016) (the Technical Guidance).
7. With regard to Class E, the Technical Guidance states:

'.....the rules also allow, subject to the conditions and limitations..... a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. *A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen* (my emphasis in italics)'.
8. In other words, if the use of a space was fundamental to the ordinary day to day functioning of the dwelling it would not be incidental but part of the primary accommodation. Taking the examples given in the guide, if a fully equipped kitchen was provided, where daily meals were prepared for the household, that would likely to constitute primary living accommodation. The same would be true of a bedroom that was used on a daily basis by a member of the household. Whilst the Technical Guidance refers to a bathroom as primary accommodation there is a clear distinction to my mind between a fully equipped bathroom, which was intended or required to provide for the day to day needs of the household, and an outdoor toilet that may be used in an occasional manner, as is proposed here.
9. The information presented indicates that the toilet would be used by those using the gym, to avoid the need to enter the dwelling. I imagine that it may also be used by those enjoying the garden in a similar manner, to avoid removing shoes etc and re-entering the house. In that sense, the presence of the toilet is clearly linked to the incidental uses that would take place outside of the main dwelling. Moreover, the dwelling contains a downstairs toilet and a bathroom upstairs. Those within the house would not rely upon the outdoor toilet for their day to day needs but would only be likely to use it when outside

enjoying the incidental facilities of the gym or garden. That is distinct from a situation where residents relied upon an outdoor toilet due to the lack of provision in the main house; a situation that was once common but would be unusual in the present day. In those circumstances one could argue that an outdoor toilet was part of the primary accommodation but, for the reasons given, that cannot be said of the proposed toilet in this case. I am satisfied that the toilet would be used for a purpose that is incidental to the enjoyment of the dwellinghouse such that it would fall within the type of building permitted under Class E.

Conclusion

10. For the reasons given above I conclude, on the evidence available, that the proposed outbuilding would have been lawful at the date the application was made. Consequently, the Council's decision to refuse to grant a certificate of lawful development was not well-founded. Accordingly, I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant a certificate of lawful development in relation to the proposed building.

Chris Preston

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 04 July 2016 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:

Planning permission would have been granted for the outbuilding by virtue of the terms of Class E, Part of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Chris Preston
Inspector

Date 29 December 2016

Reference: APP/M5450/X/16/3158812

First Schedule

The erection of a single storey outbuilding in the rear garden

Second Schedule

Land at 57 Crowshott Avenue, Stanmore HA7 1HR

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, 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 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 December 2016

by Chris Preston BPI MRTPI

Land at: 57 Crowshott Avenue, Stanmore HA7 1HR

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Scale: Not to Scale

