
Appeal Decision

Site visit made on 26 June 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 7 July 2017

Appeal Ref: APP/L5810/X/17/3167569

9 St George's Road, Twickenham, TW1 1QS

- 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 Nigro against the decision of the Council of the London Borough of Richmond Upon Thames.
- The application Ref 16/2646/ES191, dated 1 July 2016, was refused by notice dated 14 September 2016.
- The application was made under section 191(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 two outbuildings which conform to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995.

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 Decision.

Procedural matter

1. The application refers to the 1995 GPDO¹, however, both the refusal notice and the documents subsequently supplied by the Appellant refer to the 2015 GPDO. As I have to determine the LDC on the basis of the lawfulness of the outbuildings on the date of the application, 1 July 2016, this later GPDO is the relevant one for this appeal.

Main Issue

2. The main issue in this appeal is whether the two outbuildings which have been built were lawful at the date on which the application was made, that is, on 1 July 2016. In an appeal such as this the planning merits of the two outbuildings do not fall to be considered and therefore the matters relating to, among other things, the character and appearance of the area and the impact of the outbuildings, raised in representations from interested persons are matters that cannot be taken into account.

Reasons

3. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land². One of the specified exceptions is

¹ The Town and Country Planning (General Permitted Development) Order

² S.57 of the 1990 Act

provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.

4. Schedule 2, Part 1, Class E permits 'the provision within the curtilage of a dwellinghouse of (a) any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...' subject to specified limitations.
5. The Council's reasons for refusal are that the two outbuildings do not meet the criteria E.1 (f) and (i) in that the height of the eaves exceeds 2.5m and the outbuildings relate to a dwelling because there are glass structures between the buildings and the dwelling. Therefore the outbuildings should be judged against Schedule 2, Part 1, Class A – the enlargement, improvement or other alteration of a dwellinghouse. In its statement³ the Council's view is that the eaves could measure 2.5m but that the measurement needed to be verified on site. There is also a suggestion in the Council's statement that, even if the glass structures were not present the outbuildings would be too large to be incidental to the dwellinghouse.
6. The Appellant's case is that the eaves height is less than 2.5m and that the glass structures are porches and permitted development by virtue of Schedule 2, Part 1, Class D; in addition they were constructed after the outbuildings were completed and they are not attached to the outbuildings because there is gap of about 20mm between each of them and the respective outbuilding.

The eaves' height

7. An outbuilding is not permitted development pursuant to Class E if the height of the eaves of the building exceeds 2.5m. The Technical Guidance in respect of Class E⁴ advises that the eaves of a building are the point where the lowest point of a flat roof (in this case) meets the outside wall of the building and refers to further guidance on Class A. This further advice says that 'the height of the eaves is measured from the ground level at the base of the external wall of the extension to the point where the external wall meets the upper surface of the roof slope. Parapet walls should not be included in any calculation of eaves height'⁵.
8. It was difficult to ascertain any accurate measurement on site because it appeared to me that the ground level was not uniform around the buildings; the ground around the outbuildings comprised a mixture of slate pavers and grass; and it appeared that the ground level had been altered during the course of the development. In addition, the flat roof was covered with a layer of sedums, or similar plants, in trays and gravel. The Appellant asserts that these latter features are independent, unfixed and removable but given the length of time they have been present and their extent I consider that to be questionable.
9. Nevertheless, measurements taken on site from the existing ground grass level in one location to a point underneath the capping (which measured some 0.66m) were, in respect of the gallery building some 2.59m and some 2.56m in respect of the pool building. One measurement taken of the

³ Dated 24 April 2017

⁴ CLG – Permitted development for householders (April 2016) page 43

⁵ CLG – Permitted development for householders (April 2016) page 11

gallery building from the existing grass ground level to what appeared to be the flat roof at the site of the drain and hopper was some 2.44m. A photograph in the Appellant's statement shows a measurement of 2.44m from a similar drain/hopper/ground location.

10. Drawing No 698 P 009 is entitled 'current outbuilding section' and it indicates that the eaves height is 2.495m at that point. That measurement includes the depth of a slate paver but there is no indication whether that is the ground level and it appears from the drawing that the paver has been laid on some type of foundation.
11. It therefore seems to me that it is not possible to determine with complete accuracy the height of the eaves of the two outbuildings. The standard of proof is on the balance of probabilities and whilst I have some concerns about the height from the measurements, the photographs and the drawing it seems to me more likely than not that the height of the eaves of the two outbuildings does not exceed 2.5m.

The size and purpose of the outbuildings

12. The Technical Guidance⁶ advises that Class E of the GPDO 'sets out the rules on permitted development for buildings etc within the curtilage of a house. Buildings under Class E should be built for purposes incidental to the enjoyment of the house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can 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'.
13. The Court in *Emin v SSE*⁷ confirmed that regard should be had to the use to which it was proposed to put a building and to consider 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 an important consideration but was not by itself conclusive. It was 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 buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
14. Taking the above into account I find as a matter of fact that the uses of the outbuildings as a gallery for the Appellant's collection of ornamental glassware and as a swimming pool/hot tub with associated facilities are purposes incidental to the enjoyment of the dwellinghouse.
15. So far as size is concerned, the Council says that the footprint of the house is 145sq m whereas the two outbuildings total 116sq m. The latter figure is agreed by the Appellant⁸. I note that the area of the curtilage (excluding the original dwellinghouse) is some 1245sq m. The total area of ground covered by buildings does not exceed 50% of the total area of the curtilage as required

⁶ CLG – Permitted development for householders (April 2016) – page 41

⁷ *Emin v SSE and Mid Sussex CC* 58 P&CR 416

⁸ The Appellant says the total is 115.7sq m

by E.1 (b) and given the size of the plot, the size of the detached house and the uses of the outbuildings I consider that their size is genuinely and reasonably necessary in order to accommodate the existing uses.

16. It may be that in future those uses may change but the appeal has been made on the basis of the description of the purposes as set out in the Appellant's documents and which I saw on my visit.

The glass structures

17. The application is in respect of the outbuildings only. Whether the glass structures are porches or not is not a matter for this appeal because they do not form part of the description of the application.
18. The glass structures are located outside two external rear doors of the dwellinghouse and they are attached to the dwellinghouse at these points; doors to the garden are located opposite the rear dwelling doors and there is access from the structure to each outbuilding. The glass structures are not attached to the outbuildings and the gaps between the glass and the walls of the buildings varies between some 16mm (outside glass on the gallery building) to some 37mm (outside glass on the pool building). The top of the glass structure is some 21mm from the galley building and some 30mm from the pool building.
19. The Technical Guidance advises that buildings which are attached to the house are not permitted under Class E⁹ and the advice in respect of E.1(i) states that 'Class E covers buildings that are for a purpose incidental to a house. Class E does not provide permitted development rights for works related to a house (for example, extensions to a house) which are covered by other Classes of the rules on permitted development'¹⁰.
20. Although the gap between them is minimal in some places, as matter of fact and degree I find that the glass structures are not attached to the outbuildings and therefore the outbuildings are not attached to the dwelling and they are not extensions to the dwelling, that is, they are not related to the dwelling contrary to E.1(i).

Conclusions

21. Taking all the above matters into account, I conclude that the Appellant has demonstrated that the outbuildings conform to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015. I further conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of two outbuildings 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.

Decision

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

Gloria McFarlane

Inspector

⁹ CLG – Permitted development for householders (April 2016) – page 41

¹⁰ CLG – Permitted development for householders (April 2016) – page 44

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 1 July 2016 the two outbuildings described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The two outbuildings constituted permitted development as defined by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 and thus would have benefitted from deemed planning permission pursuant to Article 3(1) thereof.

Gloria McFarlane
Inspector

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First Schedule

Two outbuildings (swimming pool and art gallery) as shown on Drawings Nos 698 P 001; 698 P 002; 698 P 003; 698 P 004; 698 P 005; 698 P 006; 698 P 007; 698 P 008; 698 P 009; and 698 P 010

Second Schedule

Land at 9 St George's Road, Twickenham, TW1 1QS

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 7 July 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

Land at: 9 St George's Road, Twickenham, TW1 1QS

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Scale: Not to scale

