
Appeal Decision

Site visit made on 12 November 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 28 November 2019

Appeal Ref: APP/A5270/X/19/3228072

33 Amherst Road, London W13 8LX

- 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 John and Mrs Anette Gillan against the decision of the Council of the London Borough of Ealing.
 - The application Ref 178971CPL, dated 21 December 2017, was refused by notice dated 8 February 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is flat roof outbuilding/garage and swimming pool complex.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Reasons

2. 33 Amherst Road is a large semi-detached dwelling with a rear garden. The dwelling, originally, had a rectangular garden similar in size to neighbouring dwellings. At some time in the past further land to the rear, which had been part of 27 Amherst Road, was acquired and the garden at the rear of the dwelling was extended. This triangular part of the garden has an east boundary to no. 27, a west boundary to nos. 29 and 31, and a south boundary to playing fields.
3. The Appellant maintains that the proposed building would be permitted development under the provisions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO); which provides for 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.
4. The main issue is whether the proposed building would be within the curtilage of the dwellinghouse, meets the dimensional limitations of Class E, and is wholly required for purposes incidental to the enjoyment of the dwellinghouse. An LDC, in this case, determines whether the proposed building would have been lawful on the date of the application.
5. Third parties have suggested that the triangular part of the garden cannot be considered to be curtilage because it is under a separate title. The triangular part of the garden was removed from the title of no. 27 in 1961. There is no evidence

to indicate that the triangular area did not thereafter form part of the rear garden at no. 33. Furthermore, there is nothing in legislation to indicate that land in separate title cannot be considered to be curtilage. It is likely that the triangular area has been part of, and used as, garden land for nearly 60 years. On the date of the application the triangular area of land was part of the curtilage of the appeal dwellinghouse. Whether the proposed building, if it is built, would be lawful in the future if circumstances change, is not a matter for consideration.

6. Plans and elevations of the proposed building were submitted with the application. These drawings specify the dimensions of the proposed building, which would be built alongside the boundary to no. 27. Technical Guidance to the GPDO states that "The height of the building...should be measured from the highest ground level immediately adjacent to the building...to its highest point". The land slopes gently down from north to south and the flat roofed building would be 3.2 metres high at its south end and 2.5 metres high at its north end. The proposed building would therefore satisfy the requirement in the GPDO that it should not exceed 2.5 metres in height. The Council accepts that the building would satisfy other dimensional limitations of Class E.

7. With reference to *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416 (Emin)*, the Council maintains that not all of the proposed building is 'genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse'. They specifically refer to a corridor link between two elements of the building; a swimming pool and a changing area. The corridor link would be 7 metres long and 1.2 metres wide and the Council maintains that it "...is a sizeable proportion of the proposed building". The link would be 8.4 square metres in area and would be less than 6.5% of the building, which would have a floor area of about 133 square metres. It is not credible to suggest that the corridor link is a 'sizeable proportion' of the proposed building.

8. The link between the two aforementioned elements is only necessary because the Appellants wish to retain a birch tree that is a feature of their garden. This would be retained as the central feature of a small courtyard. It is not unreasonable for the Appellants to wish to retain the tree because it is a feature of significant amenity value, not just within the garden but also to the wider area. In this regard the corridor link can be regarded to be 'reasonably required' to preserve the birch tree. In any event, the majority of buildings require circulation space and the corridor link would be the only circulation space in the proposed building. Furthermore, the overall length of the building could have been the result of a larger swimming pool which would also not be unreasonable.

9. On the date of the application the triangular part of the garden was curtilage to the dwellinghouse, the proposed building satisfies the dimensional criteria of Class E of Part 1 of Schedule 2 of the GPDO, and all elements of the building are reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

10. For the reasons given above the Council's refusal to grant an LDC in respect of a flat roof outbuilding/garage and swimming pool complex at 33 Amherst Road, London was not well-founded and the appeal thus succeeds. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite



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 21 December 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black and shaded grey 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 operations are development permitted under the provisions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended

Signed

John Braithwaite

Inspector

Date: 28 November 2019

Reference: APP/A5270/X/19/3228072

First Schedule

Flat roof outbuilding/garage and swimming pool complex

Second Schedule

Land at 33 Amherst Road, London W13 8LX

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 operations described in the First Schedule, taking place on the land specified in the Second Schedule, were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated:
28 November 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at 33 Amherst Road, London W13 8LX

Reference: APP/A5270/X/19/3228072

Scale: not to scale

