
Appeal Decision

Site visit made on 20 January 2020

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Appeal Ref: APP/T5720/X/19/3230002

13 Thornton Hill, Wimbledon, London SW19 4HU

- 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 K Hanks against the decision of the Council of the London Borough of Merton.
 - The application Ref 19/P0589, dated 6 February 2019, was refused by notice dated 17 April 2019.
 - 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 use or development is sought is described on the application as the construction of a swimming pool.
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Formal 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

Preliminary matter

2. The description of the development on the application form and on the Council's decision notice does not adequately describe what is shown as proposed on the application drawings. What is proposed is an L shaped garden building housing a swimming pool, gym and shower room, together with plant, utility and storage rooms. I intend to alter the description of the proposed development accordingly in the certificate issued.

Reasons

3. The proposal involves operational development within the meaning of Section 55 of the Act for which planning permission is required. The application for a LDC was made on the basis that express permission for the development is not needed since planning permission is granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Article 3 grants planning permission for classes of development described as permitted development in Schedule 2. Part 1 of Schedule 2 addresses development within the curtilage of a dwellinghouse and Class E of Part 1 includes as permitted development the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. It is the Appellant's case that the proposal falls within Class E and thus permission is granted by way of Article 3.

4. Class E is however subject to a number of limitations. The single issue in dispute between the parties in this case is whether that set out in paragraph E.1(e)(ii) would be met. That says that where a building comes within 2 metres of the boundary of the curtilage, development is not permitted by Class E if the height of the building would exceed 2.5 metres.
5. The building would be within 2 metres of the boundary and the drawings submitted with the application show that the height of the building would exceed more than 2.5 metres above the ground level at various places. This is because of the variation in the natural ground level across the site.
6. Article 2(2) of the GPDO addresses that situation and states: Unless the context otherwise requires, any reference in this Order to the height of a building ... is to be construed as a reference to its height when measured from ground level: and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building ...or, **where the level of the surface of the ground on which it is situated or to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it** (my emphasis).
7. The Appellant has made reference to the MHCLG publication *Permitted development rights for householders – Technical Guidance* (TG) which gives an explanation of the rules on permitted development for householders. Whilst this is guidance only as opposed to statute, it gives a clear indication of how the Government considers permitted development provisions should be applied.
8. On page 6, in defining height, the TG says: Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building. And on page 43 when considering Class E, the TG says: The height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point.
9. From both the Order itself and from the TG, therefore, it is clear that where the level is not uniform, ground level is to be taken to be the highest point of the ground immediately adjacent to the building. Thus the height of the building is to be measured from that highest point.
10. The Appellant has had the land surveyed and this has identified the highest part of the surface of the ground adjacent to the proposed building to be in the south western corner of the site. Taking that point to be ground level, as specified in Article 2(2) of the GPDO, submitted drawing 020 P2 demonstrates that no part of the building would be higher than 2.5 metres when measured from that level. The limitation in paragraph E.1(e)(ii) would be met and the proposal would thus be permitted development falling within Class E.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garden building housing a swimming pool, gym and shower room, together with plant, utility and storage rooms at 13 Thornton Hill, Wimbledon was not well-founded and that the appeal should succeed. I

exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

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 6 February 2019 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:

The development is “permitted development” falling within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

B M Campbell
Inspector

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First Schedule

The erection of a garden building housing a swimming pool, gym and shower room, together with plant, utility and storage rooms as shown on drawing numbers: 010 P2, 016 P2, 030 P2, 017 P2, 020 P2, 032 P2 and 033 P2.

Second Schedule

Land at 13 Thornton Hill, Wimbledon, London SW19 4HU

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 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 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: 24th January 2020

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Not to scale:

