



Appeal Decision

Site visit made on 21 September 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/Y5420/X/20/3261546

47 Woodland Gardens, London N10 3UE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Dimitri Bismpas against the decision of London Borough of Haringey.
 - The application ref HGY/2020/1464, dated 11 June 2020, was refused by notice dated 7 August 2020.
 - 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 a single-storey outbuilding.
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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 found to be lawful.

Applications for costs

2. An application for an award of costs has been made by the appellant. This application is the subject of a separate decision.

Procedural matter

3. Local residents have suggested that the building is intended to serve a swimming pool. I note that there is a single reference to a swimming pool building in the planning statement submitted in support of the application. However, the plans do not show a swimming pool, and the application has been submitted on the basis that the building is to provide a summer room and to accommodate a barbecue. I shall deal with the appeal solely on this basis. Similarly, I am aware of the existence of a planning application to alter the ground levels of the existing rear garden. Again, I can only deal with the appeal on the basis of the position pertaining at the date of the application and on the basis of the building as applied for. No earthworks are shown as being proposed as part of the development for which a certificate is sought.

Main Issue

4. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if begun at the date of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me.

Accordingly, the main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

5. There is no dispute between the main parties that the proposal amounts to development as defined in Section 55 of the Act. The only matter in dispute is whether the proposal would benefit from deemed planning permission granted under a development order.
6. Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for outbuildings within the curtilage of a dwellinghouse, subject to meeting various criteria.
7. There is no dispute between the parties that the proposed outbuilding would comply with the technical criteria set out in Class E. The Council argues that because of the sloping nature of the ground on which it is proposed to construct the outbuilding, the development would require significant engineering works in order to create a level platform from which to construct the building, and that such works are not permitted by the Order.
8. The ground level falls away from the house towards the rear of the garden, and also from west to east. The highest point on which the outbuilding would be sited is at its south-west corner, and the lowest point is at its north-east corner, adjacent the boundary with the property at 48 Woodland Rise.
9. No retaining walls are shown as being proposed, and the only way in which the change in levels is shown as being addressed is through the construction of a raised plinth or slab, which would be at its highest in the north-east corner of the site.
10. The proposed plans do not provide any dimensions other than the maximum height of the building of 2.5m at the level of the highest part of the surface of the ground adjacent to it. On the basis of the main parties' measurements taken on site (which were approximate only), I judge that the fall across the width of the site across what would be the front elevation of the proposed building to be about 0.5m and the fall from the highest corner of the proposed building to the lowest corner is about 0.8m. These measurements are broadly consistent with the scaled plans showing the raised base (albeit that they do not show the eastern elevation where the base, plinth or slab would be at its highest).
11. The Order anticipates that Class E buildings may be built on sloping ground; the definition of height is included in Article 2(2), saying "*Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery 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 plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.*"
12. The latter part of this definition indicates that buildings can be higher where the ground is lower in relation to the higher part of the ground where the building is sited, and this would normally be accommodated by the provision of a plinth or slab, built up from the lower parts of the site of the building to meet the level of

the higher part. The question here is whether the nature and extent of the works required to form that base goes beyond the provision of a building as permitted under Class E.

13. Both of the main parties as well as neighbours have referred me to the case of *Eatherley v London Borough of Camden & Ireland* [2016] EWHC 1861 Admin. This case involved a proposed basement enlargement of a dwelling house, where the Court held that the excavations and underpinning involved amounted to a separate activity of substance from the construction of the basement which would follow. The judgement upheld the decision of *West Bowers Farm Products v. Essex County Council* (1985) 50 P & CR 368, where the Court held that the excavation of sand and gravel to create a reservoir to serve a farm constituted a separate operation for which there was no deemed planning permission under the permitted development regime.
14. In *Eatherley*, the Court held that the appropriate question to be asked was whether the engineering operations required were a separate activity of substance, and that the assessment was a matter of planning judgement. In my view the construction of a raised base, slab or plinth on sloping ground is a normal part of the construction of a building, and the fact that there would be walls surrounding that base of up to about 0.8m or so in height does not result in it being a separate activity of substance. My views are reinforced by the finding of Cranston J. in *Eatherley* who commented that “*engineering operations for the basement are at some point different in character to those involved in the preparation of foundations for a house*”. Here, the construction of the base, plinth or slab is part of the preparations of foundations for the building proposed, and I consider that it can be readily distinguished from basement excavations in both its character and substance.
15. As a matter of planning judgement, I therefore find that the development would comprise a single operation which would benefit from the deemed planning permission granted under Article 3 and Class E of Part 1 to Schedule 2 of the Order and that the Council’s decision was not well-founded.

Other matters

16. A number of residents have expressed concerns about the visual impact of the development, the technical challenges of soil conditions and the presence of sub-surface water courses, together with potential dangers, and the effect on a protected tree. However, these are not considerations that I can take into account on a legal determination as to whether or not a development would be lawful in planning terms. There may be other controls or private law remedies relevant to some of these matters, but they are not for me to consider here.

Conclusion

17. 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 a single-storey outbuilding 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 to issue a certificate of lawful use or development.

JP Roberts
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 11 June 2020 the operations 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, 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 is deemed to be granted under Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Signed

JP Roberts
INSPECTOR

Date 24 November 2021

Reference: APP/Y5420/X/20/3261546

First Schedule

A single-storey outbuilding as shown on the plans and particulars submitted with application HGY/2020/1464, dated 11 June 2020.

Second Schedule

Land at 47 Woodland Gardens, London N10 3UE

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 use /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, 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.

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: 24 November 2021

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

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Not to scale

