



Appeal Decision

Site visit made on 28 June 2022

by Diane Lewis BA(Hons) MCD MA LL M RTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Appeal Ref: APP/E5330/X/21/3289990

Land at Gresham Athletic Ground (formally known as Bowring Sports Ground), Eltham Road, LONDON, SE12 8ES

- 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 Ms Josephine Mayendesa (AFC Lewisham CIC) against the decision of the Royal Borough of Greenwich.
- The application ref 21/2566/CP, dated 9 July 2021, was refused by notice dated 20 December 2021.
- 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 Proposed change from asphalt tennis court to Macadam area with new 3G grass surface.

Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. The appellant set out details of correspondence and advice from the Local Planning Authority (LPA) related to the proposal and the validation of the certificate application. I do not intend to address the concerns raised because these matters are outside my remit in determining the appeal.
3. The documentation submitted with the appeal confirms that the proposed development for which a certificate is sought is the resurfacing of an existing asphalt surface with a new 3G artificial grass surface. This was also the scheme determined by the LPA¹, notwithstanding the reference to use on the decision notice. Therefore I will proceed on the basis that the appellant wishes to find out whether the proposed operations, not the use, would be lawful.
4. The main issue is whether the authority's refusal is well founded. The planning merits of the proposal are not relevant to determining whether it would be lawful or not. In this case the main considerations are whether the proposal amounts to development requiring planning permission and if so whether permission has been granted, either by a development order or by the LPA.

Reasons

5. The new artificial surface would be laid on the site of an unused tennis court. As explained by the appellant, the area is used for temporary parking. The specification sets out the work involved. Preparation would consist of power washing the area using specialist equipment. To provide drainage, the existing

¹ See officer report submitted with the Questionnaire

porous surface would be pierced and the holes filled with aggregate material. The entire perimeter would be edged with precast concrete kerbs. Asphalt surfacing would be applied and thoroughly rolled. Finally, the artificial surface would be laid, using techniques to ensure stability, support and comfort. The work would be carried out by a specialist company and trained staff.

6. For the purposes of the 1990 Act, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land². The works would not be a repair to an existing surface but involve its replacement by a different type of surface. The description of the work involved indicates that the work would have to be pre-planned, be supervised by an engineer or suitably qualified person, require specialist skills and equipment and be carried out in stages over a period of time. I conclude that as a matter of fact and degree the works would amount to an engineering operation and constitute development.
7. The submitted plan and quotation also refers to the erection of fencing and the installation of a flood lighting system. Inclusion of such works within the scope of the scheme would reinforce the conclusion that the proposal would involve development. The same observation applies to the additional quotation document that refers to a tree survey, arboricultural impact assessment, method statements and tree protection.
8. Planning permission is required for the development of land, as set out in section 57 of the 1990 Act. The proposed works do not fall within any of the stated exceptions. The appellant's reference to the Use Classes Order³ was in the context of a continuing sports and recreation use of the land. The Use Classes Order has no direct relevance to the operational works proposed and does not exempt the work from involving development of the land.
9. Planning permission may be granted by a development order. The relevant order in this instance is the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Article 3 of the GPDO grants planning permission for the classes of development in Schedule 2. The LPA, in refusing to grant a certificate, concluded that the proposal does not fall within the parameters of permitted development as set out in the GPDO. The appellant has not directed me to any relevant class in the GPDO and I have not been able to identify one that would apply in this instance.
10. There is no evidence in the appeal documents of a planning permission granted by the LPA for the proposed works.
11. These considerations lead me to conclude that the proposal amounts to development requiring planning permission. Permission had not been granted, either by a development order or by the LPA, before the relevant date of 9 July 2021. Therefore the proposed works would not have been lawful on that date. The proposed sports use of the new artificial surface does not alter this conclusion.

² Section 55(1) of the 1990 Act

³ The Town and Country Planning (Use Classes) Order 1987

Conclusion

12. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change from an asphalt tennis court to a Macadam area with new 3G grass surface was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Diane Lewis

INSPECTOR