



Appeal Decision

Site visit made on 9 October 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/P1805/X/23/3321452

Arosa, The Holloway, Alvechurch, Worcestershire B48 7QA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Karl Cross-Watson against the decision of Bromsgrove District Council.
 - The application ref 22/01605/CPL, dated 15 December 2022, was refused in part by the Council by notice dated 6 March 2023.
 - 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 proposed side extension and swimming pool outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Karl Cross-Watson against Bromsgrove District Council. This application is the subject of a separate decision.

Background and Main Issue

3. The application for the LDC was made in relation to a proposed side extension and a swimming pool outbuilding. The Council's decision notice was clear that a certificate was granted in respect of the proposed single storey side extension as it would be permitted development under Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) but refused in relation to the proposed swimming pool outbuilding.
4. The main issue is therefore whether the Council's decision to refuse to grant a lawful development certificate for the proposed swimming pool outbuilding was well-founded. This turns on whether the proposed operations would benefit from planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 of the GPDO.

Reasons

5. The appeal site relates to a detached dwelling set within a relatively large plot. The proposed single-storey outbuilding would be within the curtilage of the

dwellinghouse and would house a gym, showers, WC, and plant room, with steps leading down to a sunken swimming pool.

6. Class E (a), Part 1 of Schedule 2 permits *"any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such"* subject to the size, height, and locational limitations set out at paragraphs E.1 to E.3. The Council determined that the proposed outbuilding would fall foul of paragraph E.1 (f) which states that development is not permitted if *"the height of the eaves of the building would exceed 2.5 metres"*.
7. Although their height is not specifically shown on the submitted plans, the Council's decision notice states that the height of the eaves of the building would vary between 2.3m and 6.29m. The appellant argues that as the ground on which the proposed outbuilding would be situated is not uniform, when measured from the highest part of the surface of the ground adjacent to the outbuilding, the height of the eaves of the building would not exceed 2.5m.
8. During the site visit I observed that the ground level was not uniform, with the land sloping down steeply towards the rear of the site. As a result, the height of the eaves of the building would be greater at the southern end of the outbuilding when compared to the northern end.
9. Article 2(2) of the GPDO states that unless the context requires otherwise, the height of a building is to be construed as a reference to its height when measured from "ground level". It further states that "ground level" means the level of the surface of the ground immediately adjacent to the building in question, or where the surface of the ground on which it is to be situated is not uniform, the level of the highest part of the ground adjacent to it.
10. Further guidance on measuring the height of a building, and specifically the eaves of a building, is found in the Government's Technical Guidance (TG)¹. In the "General Issues" section on page 6 the definition of "Height" mirrors that set out in Article 2(2) of the GPDO. Guidance on the height of the eaves of a building for the purposes of Class E.1 (f) is found on page 43 of the TG, with further guidance and examples provided on page 12. Although the guidance on page 12 relates to Class A and the enlargement, improvement, or alteration of a dwellinghouse, I find that this can also be applied to Class E buildings.
11. The guidance on page 12 of the TG gives examples for measuring eaves height where the surface of the ground adjacent to the building is uniform. Guidance for measuring the height of eaves on buildings located on sloping land is found on page 13. The drawing on page 13 of the TG illustrates that a horizontal line should be "drawn" through the building from the eaves at the part of the building furthest up the slope. So long as the eaves on any part of the building does not extend above this horizontal line, then the building would accord with Class E.1 (f).
12. Put simply, the measurement of eaves height should be taken from the point where the proposed building would be furthest up the slope which, in this case, would be at the northernmost end of the building. At this point, the Council accept that the eaves height would not exceed the 2.5m allowed under Class E.1 (f). Whilst it is acknowledged that due to the sloping nature of the

¹ The Ministry of Housing, Communities and Local Government: Permitted development rights for householders – Technical Guidance, September 2019

surrounding land the eaves height at the southernmost end of the building would far exceed 2.5m, the development would nevertheless accord with the limitations of Class E.1 (f).

13. The Council have raised no conflict against any of the other limitations and conditions of Schedule 2, Part 1, Class E of the GPDO, and from my reading of the drawings, I find no reason to disagree with these findings. Accordingly, I am satisfied that the proposed outbuilding would be lawful under Class E of the GPDO.

Conclusion

14. 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 proposed swimming pool outbuilding was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

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 15 December 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding would meet the requirements and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Planning permission for the development is therefore conferred by Article 3(1) and Class E of Schedule 2, Part 1 of the GPDO.

Signed

David Jones

Inspector

Date: 3 November 2023

Reference: APP/P1805/X/23/3321452

First Schedule

Swimming pool outbuilding

Second Schedule

Land at: Arosa, The Holloway, Alvechurch, Worcestershire B48 7QA

IMPORTANT NOTES – SEE OVER

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, 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.

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: 3 November 2023

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Scale: Not to Scale

