



Appeal Decision

Site visit made on 14 May 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/N5090/X/23/3321939

65 Hampden Way, Southgate, Barnet, London N14 5DJ

- 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 Mrs Cindy Wong Shankaya against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3777/192, dated 20 July 2022, was refused by notice dated 12 April 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 described as the "Erection of an outbuilding max 2.5m height."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed outbuilding would be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

4. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'

5. The Council determined that ground levels shown on the plans submitted with the application are not representative of the natural ground level of the site, and therefore the applicant has not demonstrated, on the balance of probability, that the height of the proposed outbuilding above natural ground level would comply with limitations of E.1 (e) and (f) of Class E of the GPDO. Together these restrict the height of the building and the height of the eaves of the building to 2.5m within 2.5m from the boundary of the curtilage of the dwellinghouse. The Council also state that the proposal is for a building operation/use which, by virtue of Sections 55 and 57 of the Town and Country Planning Act 1990, is development requiring planning permission.
6. The Government's Technical Guidance (TG)¹ provides a useful guide to interpretation of the GPDO and gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Under the definition of 'height' the TG states:

"References to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground such as decking. 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.)"
7. The plans submitted with this LDC application show that the proposed outbuilding would be 2.5m in height with a flat roof, built above an area of flat land. However, this is inconsistent with the plans submitted to the Council in a previous application from 2021 (Council ref: 21/6490/HSE) which showed this part of the garden sloping down from the rear boundary of the site towards the dwellinghouse.
8. In addition, during their site inspection, the Council Officer also observed, that works were being undertaken in the rear garden, where the garden was being altered to create terraces at different levels. This included the land where the appeal outbuilding is proposed to be located. Indeed, I also observed these levelling works during my own site inspection where the levelling works were still ongoing, with new retaining walls being installed to create different levels rising up towards the rear of the site. The plans submitted with this LDC application fail to provide precise details of what the height of the proposed outbuilding would be from the natural garden level of the land.
9. Therefore, the ground levels shown on the proposed plans do not appear represent the natural ground level of the site, and there is limited evidence before me to be certain that the proposed outbuilding would comply with the height limitations set out in E.1 (e) and (f).
10. A sketch has been submitted, as a scale of 1:5, at the final comments stage, by the appellant in an attempt to show the levelling works which were carried out and address the concerns raised by the Council. However, this drawing is lacking in detail in so far as it does not show or explain the full extent of the works being carried out to create the terraces, with the creation of the

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

retaining walls being constructed in the garden. Without clearer information on the extent of the works being carried out to facilitate the proposed outbuilding, it is unclear if these levelling works would constitute 'development' under s55 of the 1990 Act and require planning permission.

11. Furthermore, this sketch drawing does not show the proposed outbuilding, and as such, it is unclear what the proposed height of the outbuilding is relative to the natural ground levels, prior to the levelling works.
12. The appellant states that this sketch drawings illustrates that the landscaping does not exceed 0.3m in height. However, reference to the 0.3m height restriction relates to Paragraph E.1 (h), of the GPDO which restricts the construction or provision of a verandah, balcony or raised platform. This is made clear within the TG states, which states that a raised platform is defined as any platform that has a height of more than 0.3m. However, that is materially different from the objection raised by the Council relating to the altered land levels in the rear garden, in relation to the height restrictions of E.1 (e) and (f) of Class E of the GPDO.
13. The appellant also refers to an email correspondence from the Council Officer which refers to the potential the closure of the enforcement case relating to the changes in land levels. However, that email makes clear that that recommendation needs to be signed off by a manager. In any event, the lack of enforcement action does not itself demonstrate what the natural land levels are or that the Council agree that the altered land levels are lawful, simply that at that time the Council did not consider these works are expedient to enforce. This would not affect the power of the local planning authority to issue an enforcement notice in the future, if considered necessary.
14. Furthermore, that email from the Council Officer makes clear that *"this is not a confirmation that the unlawful application becomes lawful. For this, I advise that you speak to the officer that was dealing with the application or appeal."* However, there is no further confirmation that the altered land levels are lawful or have been granted planning permission.
15. The appellant considers that reference to the garden level is beyond the scope of this LDC application. However, the TG makes clear that the ground level is the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground (My emphasis). Therefore, any levelling works which results in the change of the natural ground level must be incorporated into the measurements for height.
16. Based on the above considerations, it has not been satisfactorily demonstrated, on the balance of probabilities, that the proposed outbuilding would comply with the limitations set out in E.1 (e) and (f), of Schedule 2, Part 1, Class E of the GPDO, and hence would not have been lawful at the date of the application. Therefore, the appellant has failed to discharge the burden of proof to demonstrate that the proposal would benefit from permitted development rights within Class E.

Conclusion

17. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the outbuilding was well-founded and that the

appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR