



Appeal Decision

Site visit made on 25 June 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/G5180/X/22/3313549

Ashbourne, 25B Holbrook Lane, Chislehurst BR7 6PE

- 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 D Robinson against the decision of the Council of the London Borough of Bromley.
 - The application ref 22/01720/PLUD, dated 26 April 2022, was refused by notice dated 16 December 2022.
 - 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 certificate of lawfulness for the construction of a single storey rear extension to the main dwellinghouse and the construction of an outdoor pool and single storey detached outbuilding within the rear garden of the dwellinghouse.'*
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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 operations which are considered to be lawful.

Preliminary Matters

2. The description of the proposed development in the banner heading above is taken from the application form. For the Certificate however, I have used the more concise description on the appeal form. The Council used a similar description on their decision notice.
3. Whether an LDC should be issued is strictly a matter of fact and law. Therefore, planning merits considerations are not before me in this appeal.

Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class A and Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. The onus is on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a substantial detached modern bungalow. The bungalow stands in generously sized grounds. It is proposed to erect a single

storey extension at the rear of the bungalow and to construct an outdoor swimming pool in the rear garden, along with erecting a freestanding residential outbuilding.

7. The proposal falls within the definition of development set out in s55(1) of the Town and Country Planning Act 1990 (the Act). Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. At s191(2)(a), the Act states that operations are lawful where no enforcement action may be taken in respect of them. This includes, for example, where those operations benefit from a grant of planning permission.
8. At Article 3, Schedule 2, Part 1, Class A, the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse, subject to the size and locational limitations in paragraphs A.1 and A.2 being satisfied, along with the conditions in paragraphs A.3 and A.4. There is no dispute that the proposed extension would satisfy the relevant limitations in paragraphs A.1 and A.2 and the relevant conditions in paragraph A.3, whilst the conditions in paragraph A.4 do not apply in this instance. I concur.
9. The GPDO at Article 3, Schedule 2, Part 1, grants planning permission in Class E paragraph E.(a) for the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool, where it is required for a purpose incidental to the enjoyment of the dwelling as such.
10. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. The Government's Technical Guidance (TG) advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling. The TG goes on to advise that the term 'incidental' does not cover normal residential uses such as separate self-contained accommodation, or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen¹.
11. Established case law makes it clear that in the context of Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose².
12. The outbuilding, which would have a total floor area of around 169m², would contain a home gym, a home office, a 'wellness area' including a sauna and jacuzzi, a garden store and a plant room. These are all activities that can reasonably be regarded as being subordinate to and connected with the running of the dwelling and as such, incidental to its enjoyment. There is nothing in the GPDO, the TG or established case law which might indicate that activities which otherwise would be regarded as incidental to the enjoyment of

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

a dwelling on an individual basis, might not be considered as such in accumulation with one or more other incidental activities.

13. The home gym would have a floor area of around 53m² and would contain various items of exercise equipment, including training machines and weightlifting gear, as well as a space for Pilates and an area for recovery between the various activities. My understanding is that the equipment would cater for users who vary in age, the appellant and other family members placing great importance on maintaining their health and fitness. There is little to indicate that the home gym would not be used by multiple members of the appellant's family at times, as well as being used by individual family members on occasion.
14. In the above context, the range of facilities to be provided in the home gym would not be excessive. There would need to be reasonable safety clearances around the equipment with sufficient space for circulation, along with adequate space for activity such as Pilates. As a result, it is unlikely that a home gym serving a family could be appreciably smaller without being cramped internally or otherwise less convenient to use, for example because equipment has to be moved around between the various activities. Similarly, with a small table and two chairs the recovery area would not be unusually large for its intended use.
15. The home office would have a floor area of around 30m², accommodating a desk and chair along with an office printer, a meeting area with a table and two chairs and an area for storage. The furniture and equipment are likely to take up a significant portion of the office floor area. Allowing for sufficient circulation space, the home office is not particularly large. Besides, it is not unusual for an office which, as in this case, is used by persons running a business, to have a relatively spacious floor area-for example, for prestige reasons and in the interests of providing a comfortable working environment. It is unlikely that the size of the home office could be reduced to any significant extent without compromising its efficient use or appreciably eroding the sense of space.
16. The wellness area would occupy around 49m² of the outbuilding floor area, containing a shower/changing space alongside the jacuzzi and sauna. The size of the wellness area is likely to be little greater than that commensurate with use by a single family. Although there would be ample space around the jacuzzi, it is likely that a portion would be taken up by sun beds or chairs, another portion would be required for safe circulation, given that floor surfaces may well be wet at times, whilst the remainder would contribute towards a pleasant setting overlooking the outdoor pool. To my mind, none of this suggests that the size of the wellness area would be excessive for its purpose.
17. The shower/changing space would be convenient for users of the wellness area, who would otherwise have to walk outside for several metres to access facilities in the bungalow, possibly during hours of darkness or in inclement weather conditions. As a result, the shower/changing space would be part and parcel of and integral to the incidental activity in the wellness area, not primary living accommodation.
18. The garden store would occupy a floor area of around 11m² within the outbuilding. Given the substantial size of the appellant's garden and the associated maintenance requirements, it is highly likely that a weathertight, secure storage facility of similar proportions would be required to store

gardening equipment, which includes a ride on lawnmower. With a floor area akin to that of a small garage, the store would not be unusually large when taking into account the likely type and size of some of the equipment items to be accommodated. Similarly, a floor area of 5m² would not be especially large for housing plant associated with the wellness area and the outdoor pool.

19. Given that activities within the outbuilding would be taking place at or around similar times, there are likely to be occasions when the shower/changing space in the wellness area are unavailable to users of the home office or for freshening up after using the home gym. That being the case, it is not excessive to provide a second WC/shower close to those facilities. It would afford greater convenience to users, compared to either waiting for the wellness area facility to become available or to accessing facilities in the bungalow. Therefore, it is not unreasonable to regard the second WC/shower room as part and parcel of and integral to the home gym and home office uses. Besides, this facility would occupy a modest portion of the outbuilding floor area.
20. For the reasons set out above, in my judgment none of the spaces within the outbuilding would be unusually or unreasonably large, having regard to their intended use, nor would there be an obviously unnecessary duplication in facilities. This suggests that the nature and scale of the proposed activities would not go beyond a purpose or purposes that are incidental to the enjoyment of the bungalow. It all points towards the outbuilding not being of an excessive size, having regard to the secondary or incidental role in relation to the bungalow that it is proposed to serve.
21. The total floor area of the outbuilding would be well below half the floor area of the bungalow, which would be around 502m² following erection of the proposed extension. Accordingly, the outbuilding would be considerably smaller than the bungalow. This is another factor which, whilst not in itself determinative, nevertheless indicates that the outbuilding would not be of an excessive size in relation to its stated purposes.
22. There is no requirement to show that the bungalow cannot be used to provide space for the purposes that the outbuilding would serve. In any event, as far as I could see the bungalow floorspace is more or less fully utilised. The space currently being used as a home office is quite modest in size. Even if rearranged internally, it is unlikely that the bungalow could accommodate an office which would compare favourably with that proposed in the outbuilding, in terms of the floor area and range of furniture and other items, without significantly compromising on living space.
23. Similarly, it is unlikely that a home gym of comparable floor area could be accommodated in the bungalow, without compromising on living space. A home gym would also generally require adequate ventilation. In addition, it is entirely possible that noise from exercise activity could cause disturbance to other occupiers of the bungalow, particularly during the early morning. Therefore, there are likely to be practical difficulties in providing a comparable home office and home gym in the bungalow. Other facilities, including the jacuzzi and sauna, are generally found in and normally associated with a secondary structure such as that proposed, as are the store and plant rooms.
24. It is not unreasonable to locate a home office away from primary living accommodation, to avoid sources of noise and disturbance, such as in the

lounge or the kitchen, as well as to support an appropriate work/life balance. The appellant is unlikely to experience significant levels of noise and disturbance from activities in the home gym and wellness area when using the home office. In all likelihood, they would either be not working when those activities are taking place or they would be able to prevent disruption from occurring.

25. Drawing the above matters together, based on the available evidence, as a matter of fact and degree, in the circumstances of this particular case I find that the outbuilding would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling, it would not be of a size that is excessive for its purpose and paragraph E.(a) is therefore satisfied.
26. The planning permission granted by Class E is also subject to the size, height and locational limitations in paragraphs E.1 to E.3 being satisfied. There is no dispute that the outbuilding would satisfy the relevant limitations in paragraphs E.1 and E.3, whilst paragraph E.2 is not applicable in this instance. Nor is it disputed that the outdoor pool would be required for a purpose incidental to the enjoyment of the bungalow. In relation to both of these matters, I concur.
27. Accordingly, the appellant has been able to show that, on the balance of probability, the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class A and Class E and is lawful for planning purposes.

Conclusion

28. 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 for the construction of a single storey rear extension and the construction of an outdoor pool and single storey detached outbuilding within the rear garden 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.

Stephen Hawkins

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 26 April 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the available evidence and on the balance of probability, planning permission is granted for the proposal (as shown on the following drawing nos: PB874-05 REV B, PB874-07 REV B, PB874-08 REV B, PB874-20 REV B, PB874-21 REV B, PB874-06 REV C, PB874-09 REV C, PB874-10 REV C & PB874-22 REV C) by Article 3, Schedule 2, Part 1, Class A and Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: **19 July 2024**

Reference: APP/G5180/X/22/3313549

First Schedule

Construction of a single storey rear extension and the construction of an outdoor pool and single storey detached outbuilding within the rear garden

Second Schedule

Land at 25B Holbrook Lane, Chislehurst BR7 6PE

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 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: **19 July 2024**

by Stephen Hawkins MA, MRTPI

Land at: 25B Holbrook Lane, Chislehurst BR7 6PE

Reference: APP/G5180/X/22/3313549

Scale: Not to Scale

