



Appeal Decision

Site visit made on 11 February 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/P4605/X/24/3348716

Austin Branch RBL Crown Bowling Green, 82 Quarry Lane, Birmingham B31 2PY

- 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 Austin Branch RBL against the decision of Birmingham City Council.
- The application ref 2024/02390/PA, dated 15 April 2024, was refused by notice dated 16 July 2024.
- 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 the erection of a small pavilion for the bowling green.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded. This will turn on whether the appeal scheme comprises development for the purposes of the Town and Country Planning Act 1990 (as amended)(the Act) and if so, whether it benefits from express permission or is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).

Reasons

3. An application under section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land, would have been lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the development would be lawful.
5. The appellant states that there has always been a pavilion on the green, but that it was demolished during redevelopment of the club house and the building of local homes. The appellant suggests that in order to return the crown bowling green to

- (its) original use, they require a small pavilion and are looking to use a pre-build garden office with bi-fold doors opening onto the green.
6. The proposed building would measure around 4m by 6m and is likely to be brought to the site in one piece. Given the purpose of the building, it seems likely that the structure would stay in the same place and so it is likely to have a quality of permanence. In my view, the proposed structure would be a building and would therefore constitute development for the purposes of section 55 of the Act.
 7. Planning permission 2017/07534/PA was granted in October 2018 for 'Alterations to and refurbishment of the Royal British Legion Club and associated car park and access points plus the erection of 12 semi-detached dwellings on the former car park with separate access from Winchester Gardens. Includes demolition and re-building of the bowling pavilion'.
 8. I am advised that this permission has been implemented. Condition 18 required details of the replacement bowling pavilion building, which I am advised were approved in July 2020, reference 2020/04925/PA. Both the location and the design are said to be different compared with the appeal scheme and, since I have no evidence to the contrary, it seems unlikely that the proposed building would be authorised by the planning permission.
 9. Schedule 2 of the GPDO sets out permitted development rights for various types of development. Although the appellant has not explicitly stated it considers the proposed building would be granted by the GPDO, since the Council has addressed this in its statement of case, I shall consider this matter below.
 10. Part 4 of Schedule 2 of the GPDO grants permission for certain temporary buildings while operational development is being carried out. However, the permission does not apply in respect of activities which might in lay terms be described as operations but which in planning terms represent the use of land, such as the use as a bowling green. As such, the building would not be granted permission by Part 4 of the GPDO.
 11. Part 7 of Schedule 2 of the GPDO permits non-domestic extensions, alterations etc. Class A relates to commercial, business or service premises, which means a building, or part of a building, used for any purpose within Class E of Schedule 2 to the Use Classes Order. The appellant suggests that the existing use of the land would fall within Class E(d) of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO), which is use for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public.
 12. However, although the building would, by its very nature provide an indoor space, its use would be in association with the bowling green, which is an outdoor sport. As such, I consider the use of the land falls within Class F2(c) of the UCO, which is an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms. Since the appeal site does not fall within Class E, it would not benefit from permitted development sites granted by Part 7 of the GPDO. Furthermore, the proposed building is a new building and not an extension or alteration of an existing building.
 13. While there may have previously been a pavilion on the site, since the proposed building would be development and planning permission has not been granted,

either through an express grant of planning permission or by the GPDO, the erection of the building would not have been lawful at the time of the application and so the appeal must fail.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a small pavilion for the bowling green is 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.

M Savage

INSPECTOR