

Appeal Decision

Site visit made on 25 March 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/M1005/X/23/3334222

The Gables, 94 Church Road, Quarndon, Derby DE22 5JA

- The appeal is made by George Tyler under section 195 of the Town and Country Planning Act 1990 against a refusal by Amber Valley Borough Council to grant a certificate of lawful development.
 - The application Ref: AVA/2023/0653, dated 22 August 2023, was refused by notice dated 1 November 2023.
 - The application was made under section 192(1)(b).
 - The operations for which the certificate is sought are "Garden improvements including new patio areas, pathways, pool, sauna and pergola".
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is allowed and attached to this decision is a certificate of lawful development relating to the operations described in the application, which I consider would be lawful if begun at the time of the application.

Reasons for the appeal decision

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed operations at the time of the application. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 4. The Council refused the application for the following reasons: -

"The proposed pool, sauna and pergola are to be sited on patio areas. The sections and details submitted show that the proposed changes in levels exceed 0.3 m from the existing ground level and therefore as set out in the GDPO would constitute a raised platform and would not comply with E1 (h). Given the land level changes this would constitute a raised platform and an engineering operation and therefore planning permission is required.
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The proposed patio includes raising the land levels by more than 0.3 m. This constitutes operational development and an engineering operation and therefore planning permission is required."

5. There are two main issues here – whether the patio would be an engineering operation and not a building operation and whether the patio would be a raised platform that would not be permitted development within the meaning of the GPDO.
6. The patio would be constructed on sloping ground using masonry sleeper walls with a suspended beam and block floor. The underlying ground level would remain the same. These are the kind of works routinely carried out by a builder. They would not require the involvement of anyone with engineering experience and would in my opinion be a building operation and not an engineering operation. The resulting structure would be a building for the purposes of the GPDO, since the Order defines "building" as including any structure or erection.
7. The reference in the Council's decision to E1(h) is to the exclusion from permitted development of any building that includes the construction or provision of a "raised platform". There is no dispute that the patio as a matter of fact would be raised and that it would be a platform, but the Order prescribes a defined meaning to the term in this context, which is "'raised" in relation to a platform means a platform with a height greater than 0.3 metres". This meaning has to be read alongside Article 2(2) of the Order, which states: -

"(2) Unless the context otherwise requires, any reference in this Order to the height of a building ... is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building ... in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it."
8. It is not in dispute that the level of the surface of the ground on which the patio would be situated is not uniform. Nor is it in dispute that the patio would not have a height greater than 0.3m above the level of the highest part of the surface of the ground adjacent to it.
9. There is no indication that the context in this appeal requires a different approach to that stated in Article 2(2) and I have therefore concluded that the patio would be permitted development. The other garden improvements described in the application do not give rise to concerns about their treatment as permitted development.
10. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), a certificate of lawful development has been granted.

D.A.Hainsworth

INSPECTOR