

Appeal Decision

Site visit made on 10 June 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16th June 2025

APP/C3430/X/24/3345415

10 Rushford Avenue, Wombourne, Wolverhampton WV5 0HZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by South Staffordshire District Council to grant a certificate of lawful use or development.
- The appeal was made by Mrs B Wakelam.
- The application, reference 23/01046/LUP dated 13 December 2023, was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended. It was refused by a notice dated 14 February 2024.
- The Application for a Certificate of Lawful Development was for: Construction of outbuilding for utilisation as rehabilitation pool and gym at No. 10 Rushford Avenue, Wombourne, Wolverhampton WV5 0HZ.

Summary of decision: The appeal is dismissed.

Costs application

1. The Appellant, Mrs B Wakelam, applied for an award of costs against South Staffordshire District Council. That application is considered in a separate decision.

Appeal property and application

2. The appeal property, No. 10 Rushford Avenue, Wombourne, is a 2 storey house on the corner of the junction with The Broadway. No. 10 has gardens to front and back with a wide side garden to The Broadway. Part of No. 10's garden at the corner of The Broadway and Rushford Avenue is open and unfenced at the back of the footways to the 2 roads. No. 10's rear garden has a tall hedge boundary to The Broadway.
3. Mrs Wakelam wishes to build a detached single storey outbuilding to the south-eastern side of the dwelling to provide a rehab pool, (a hydrotherapy pool), a gym room, changing room and WC. The outbuilding would be 11.4m long, 5.2m wide, covering an area of almost 60m². It would be nearly 2m from the side of the No. 10 dwelling, set back slightly from its principal elevation to Rushford Avenue. It would have a gable pitched roof 2.3m to the eaves; 3.7m at its highest point.
4. Mrs Wakelam and her partner, Mr Cruddas, who live at No. 10, each suffer several medical issues. Their medical supporter said they will worsen with age and time. Mrs Wakelam and Mr Cruddas would gain physical and mental health benefits from having the facilities to be provided in the outbuilding.

Selected legal background

5. Article 3, Schedule 2, Part 1, Class E *buildings etc incidental to the enjoyment of a dwellinghouse* to The Town and Country Planning (General Permitted Development), (England) Order 2015), (the Order), permits, (subject to limitations), the provision within the curtilage of the dwellinghouse of - (a) any building or

enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or

6. The High Court in the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909 determined that an outbuilding in the curtilage of a dwelling must be 'required for some incidental purpose' to be development permitted under Class E. The size of the building, including in comparison to the host dwelling, may be an important consideration, but size alone is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
7. Sir Graham Eyre QC in *Emin* said 'The fact that such a building had to be required for a purpose associated with the enjoyment of a dwellinghouse could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case ...'.
8. Order Class E concessions do not mention a size relationship with the existing dwelling nor does Class E fix a limit on the size of an outbuilding. However, the words incidental to the enjoyment of the dwellinghouse as such impart some consideration of a relationship between the house and its outbuilding. Those principles were reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405. The term 'required' is therefore interpreted for the purposes of applying Class E as meaning 'reasonably required'. Other judgments clarify that in each case it has to remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit, (*Peche D'or Investments v SSE* [1996] JPL 311) and that the facilities could not be something for the provision of a primary dwellinghouse purpose, (*Rambridge v SSE & East Herts DC* [1996] QBD).

Local Planning Authority

9. The Council said the proposed single storey outbuilding to provide rehabilitation pool and gymnasium would not benefit from permission granted by Class E of the Order. Mrs Wakelam failed to provide medical evidence to justify the need for the specific type of facilities proposed or that they could only be provided within a large outbuilding at the dwelling. The proposed facilities were excessive in scale in relation to the existing dwellinghouse. That was especially so when such health and leisure facilities and rehabilitation services could be accessed nearby in Wombourne.

Considerations

10. Mrs Wakelam wishes to construct an outbuilding to accommodate a rehab pool, gym and changing room. A rehabilitation pool, also known as a hydrotherapy pool or aquatic therapy pool, is, as I understand it, a specialized pool used for the rehabilitation and for physiotherapy treatment of patients. The pools are usually warmer than a typical swimming pool at around 32-35°C and are designed for aquatic exercise and therapy under the guidance of a qualified therapist.
11. The supportive letter from Dr Shahid Visram opines that Mrs Wakelam and Mr Cruddas would gain physical and mental health benefits from having the rehab pool and gym built onsite. Dr Visram said it would also mitigate the anxiety of travelling to an external site for those services.

12. In my view, whilst the adverse health situations that Mrs Wakelam and Mr Cruddas find themselves in is worthy of sympathy and support, it is not clear that a case was made for a need for such a large building as that proposed.
13. The new building would cover a ground area of some 59m². The ground floor of the house at No. 10 is 88.2m². For Mrs Wakelam, it was claimed that the Council's approach of having assessed the 2 ground areas as being 'nearly the same size' had contributed to a prejudgement that the proposed building would not be subservient or proportionate. However, as the building would be a substantial structure, situated in a prominent position, it somewhat weakens her rebuttal. It may well be that the proposed rehab pool could be beneficial to Mrs Wakelam and to Mr Cruddas, but I am concerned that the proposed building and its facilities would be disproportionately large. Looking at an opinion from Chartered Physiotherapists specialising in Aquatic Physiotherapy, I note that an area of 2.7m² per person is the recommended treatment space in a therapy pool. The proposed application building pool area would be about 15m², suitable to accommodate a much larger bather load than here proposed. It would be more akin to a small swimming pool, which use being somewhat different to that of a therapy pool and perhaps more suited to a family at No. 10, rather than to a couple with special medical needs.
14. The same concerns arise in respect of the proposed gym and changing room. Again, despite no plant room being shown on the application plan, the proposed facilities appear somewhat excessive for the medical needs of Mrs Wakelam and Mr Cruddas. It might be thought that account taken of those needs, rather than the proposal being required for a purpose incidental to the enjoyment of the dwellinghouse as such, (Class E.(a)), steps over into the inappropriate area of planning merit. However, special medical justification does seem at odds with the E(a) wording "required for a purpose incidental to the enjoyment of the dwellinghouse". If the medical needs are to be the justification for such a large building at No. 10, more details would have been needed to deal with the question of its apparently excessive size.

Conclusion

15. I can understand that where medical support facilities can be provided within the home, they would be more convenient and reassuring than having to travel elsewhere for those services. But I am not persuaded that the proposed large outbuilding to house the rehab pool and gym are reasonably required. The application building is not permitted by the Order. It would require planning permission.

FORMAL DECISION

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for Construction of outbuilding for utilisation as rehabilitation pool and gym at No. 10 Rushford Avenue, Wombourne, Wolverhampton WV5 0HZ, was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR