
Appeal Decision

Site visit made on 6 November 2017

by K R Saward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2017

Appeal Ref: APP/R5510/X/17/3173797
15 Swakeleys Drive, Ickenham UB10 8QB

- 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 Mr M Harris Tanvir against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 12517/APP/2017/288, dated 25 January 2017, was refused by notice dated 6 April 2017.
 - 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 single storey outbuilding to rear for use as a sauna/steam/swimming pool.
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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 operation which is considered to be lawful.

Preliminary Matters

2. The original application described the proposal as a "single storey outbuilding in rear garden." Both the Council's decision notice and the Appeal Form gave the more prescriptive description of "single storey outbuilding to rear for use as a sauna/steam/swimming pool". With the agreement of the appellant I have utilised this revised description.
3. A Lawful Development Certificate (LDC) is not a planning permission. That being so, the planning merits of the outbuilding (including whether there is impact on neighbouring occupiers, the character and appearance of the area and flood risk) are not relevant in this appeal. My decision is based on the facts of the case and on relevant planning law and judicial authority.
4. By the time of my site visit a much smaller outbuilding had been constructed in the position intended for the proposed development. The main dwelling was also in the process of being extended. This has no bearing on my decision which must be based entirely on the development applied for and the circumstances at the time of the application.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed development would

constitute permitted development by virtue of the provisions of Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO').

Reasons

6. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would be lawful at the time of the application.
7. The appeal property is a 3 bedroom semi-detached house with a long spacious garden. The submitted drawings show the proposed outbuilding would be constructed in the rearmost part of the garden. It would be a simple, flat roofed structure spanning most of the width of the garden and 14.5m deep.
8. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. This includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. A development is subject to a number of prescribed limitations. There is no suggestion that the proposed outbuilding would conflict with any of those limitations. One limitation in paragraph E.1.(b) is that the total area of ground covered by the building must not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). The proposed outbuilding falls well within that threshold. That being so, the appellant maintains that the Council was wrong to refuse the application by reason of the size and scale of the proposed outbuilding.
10. There is nothing in Class E to say the footprint of the proposed outbuilding must not exceed the footprint of the original dwellinghouse. However, that does not mean the size of the outbuilding is irrelevant. The outbuilding must be required for a purpose incidental to the enjoyment of the dwelling. That can have implications in terms of size and scale. There is no statutory definition of the word "incidental", but case law provides authority for how this should be interpreted by decision makers.
11. Whether use of a building can properly be regarded as 'incidental' requires the use to occur together with something else but nevertheless remain at all times subordinate to it. Thus, the test to be applied is whether the proposed use when considered in the context of the planning unit is intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse.
12. This involves not only regard being had to the proposed use, but a consideration of the nature and scale of that use. When the matter is looked at as a whole, the physical size of the building may be an important consideration, but is not by itself conclusive. The Courts have also established that the term 'required' should be interpreted to mean 'reasonably required'.
13. The starting point is a consideration of the proposed use. Government guidance in relation to Class E is contained with the publication 'Permitted development rights for householders – Technical Guidance'¹. This makes clear that a purpose incidental to a house would not cover normal residential uses.

¹ Published by the Department for Communities and Local Government, April 2017

For example, the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen would not be covered. However, there is no suggestion that the building would be used for such purposes.

14. The application describes the proposed use of the outbuilding as a sauna, steam and swimming pool. Class E makes specific reference to a swimming pool and a sauna/steam room would not ordinarily be found within a dwelling. All of those uses fall squarely within a use that is incidental to the enjoyment of the dwelling. A shower and separate toilet are also shown in the plans. Although a shower and toilet can be regarded as primary living accommodation, in this case they would be an ancillary facility to the swimming pool and sauna/steam room.
15. The Council may be fearful that the outbuilding could be put to some other use, but the same could be said of any outbuilding. Contrary to the appellant's assertion, there is no power to impose conditions restricting the use. The only conditions that would apply are those set out within Class E. Nonetheless, concern over potential future use is not cause in itself to refuse the application. It must be judged on the stated proposed use rather than what might occur in the future. If the outbuilding were to be used for other purposes amounting to a breach of planning control then the LDC would be of no benefit to the appellant and the Council has powers to deal with it.
16. The issue turns to whether the size of the outbuilding is reasonably required to meet the specified incidental purpose and not for extraneous purposes. This necessitates ensuring that the use is incidental or conducive to the very condition of living in the dwelling.
17. The outbuilding would occupy a footprint calculated by the Council to be approximately 116sqm. That is almost double the footprint of the original dwellinghouse calculated at approximately 59sqm. Those figures are not contested by the appellant.
18. It is for the appellant to show that the floorspace attributed to the proposed use as identified in the application is genuinely and reasonably required or necessary in order to accommodate that use.
19. In comparison to the original dwelling, the footprint is substantial, but a swimming pool will by its very nature occupy a sizeable area. As shown in the drawings, the pool itself would be relatively modest in size. It would not fill the building but have space around it including wide areas along one side and at the front. Loungers and a sitting area are depicted at the poolside with the shower, wc and sauna/steam towards the rear corner.
20. The appellant says that a smaller structure would be impractical for the intended purpose. Whilst a swimming pool, sauna/steam, shower and wc of similar size could be accommodated within a smaller building, the proposal allows for space to sit around the pool and adjacent to the water. It is not an unreasonably large area and there is nothing to indicate that the space would be used for purposes unconnected with the facilities.
21. The building would be much larger than the original dwelling, but it would only take up a moderate proportion of the garden with a reasonable sized area of garden space remaining. Given the size of the planning unit and the length of

the garden, the size and scale of the building would not be disproportionate nor would it be excessive in size and scale for the stated purpose.

22. Accordingly, the outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such to constitute permitted development within Class E.

Conclusion

23. 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 in respect of single storey outbuilding to rear for use as a sauna/steam/swimming pool 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.

KR Seward

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 dated 25 January 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured 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:

The proposed operations would have constituted permitted development within the terms of Article 3 and Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

KR Seward

INSPECTOR

Date 16 November 2017

Reference: APP/R5510/X/17/3173797

First Schedule

Single storey outbuilding to rear for use as a sauna/steam/swimming pool as shown on drawing no.s PD OUT-01, PD-02 and site plan.

Second Schedule

Land at 15 Swakeleys Drive, Ickenham UB10 8QB

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: 16 November 2017

by K R Seward Solicitor

Land at: 15 Swakeleys Drive, Ickenham UB10 8QB

Reference: APP/R5510/X/17/3173797

Scale: NOT TO SCALE

SITE PLAN: 15 SWAKELEYS DRIVE, UXBRIDGE, MIDDLESEX, UB10 8QB



Rev. Date Comment		
Site Address: 15 SWAKELEYS DRIVE UXBRIDGE MIDDLESEX UB10 8QB		
Scale: 1:1250 @ A4		
Job No:	Drawing No:	Rev:
SWAD15	SITE PLAN	