



Appeal Decision

Site visit made on 16 September 2015

by D Whipps LLB Solicitor LARTPI

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

Decision date: 23 October 2015

Appeal ref: APP/G5180/X/15/3011495

Beech Tree House, West Hill, Downe, Orpington, Kent BR6 7JJ

- 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 and Mrs D Christilaw against the decision of the London Borough of Bromley.
- The application Ref DC/14/04260/PLUD, dated 28 October 2014, was refused by notice dated 29 January 2015.
- 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 two outbuildings to be used for purposes incidental to the enjoyment of the existing dwellinghouse (garage for vehicles and games room/playroom/gym).

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. There is a discrepancy between the description of the proposal used by the appellant in his original application and the description subsequently used by the Council in their Decision Notice. The latter includes reference to the proposed swimming pool at the rear of the property, which is absent from the original application. Drawing No. BTH-6750-PD-G-010 submitted with the application clearly shows a swimming pool. Moreover, both parties refer to the swimming pool in their representations. I shall, therefore, adopt the Council's description on the basis that it is more complete. I am satisfied that to do so will cause no injustice to either party.
2. I have received representations in connection with this appeal on the planning merits of the proposed development. These are not, however, relevant to the determination as to whether a certificate of lawfulness should be granted. My decision rests on the facts of the case and on relevant planning law. I will not, therefore, have regard to the planning merits in reaching my decision.
3. A new Town and Country Planning (General Permitted Development) Order came into effect on 15 April 2015 replacing the Town and Country Planning (General Permitted Development) Order 1995 as amended. However, whilst this appeal is being determined after the 2015 Order came into effect, the appeal itself still needs to be determined against the 1995 Order. This is

because the test in section 192(2) is whether the operations would be lawful if instituted at the time of the application.

Background

4. Beech Tree House is a large 3-storey detached dwellinghouse, set more or less centrally, within its garden which extends to about 0.4 ha. The property is currently unoccupied and undergoing extensive alterations and/or improvements.
5. These works have, in part, necessitated an earlier application for planning permission (ref: DC/14/00550/FULL6) which permitted the demolition of an existing garden room/conservatory and outbuilding, and the erection of a 2-storey side extension and roof alterations and extensions to form second floor accommodation. The plans submitted with this application show an intention to have at ground floor, a large kitchen/family room/garden room, a separate dining room and one further room, at first floor level, 4 ensuite bedrooms and on the second floor a further ensuite bedroom and a games room/studio.
6. In addition to the dwellinghouse there is an existing single storey L-shaped outbuilding which includes a garage. It is proposed to demolish this building and replace it with 2 buildings. These are shown in detail on application drawing number BTH-675-PD-G-010. One building is shown essentially as a garage capable of accommodating 5 motor vehicles and a plant room associated with the proposed swimming pool. The other building is shown as including a games room (with snooker table and seating), work room, store and utility rooms. It is these proposed buildings, together with the swimming pool, which are the subject of this appeal.

Reasons

7. Class E Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended permits, amongst other things, 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, subject to both limitations and conditions. The Council submit that the proposed buildings are not required for a purpose incidental to the enjoyment of the dwellinghouse as such.
8. In determining what constitutes a purpose incidental to the enjoyment of the dwellinghouse, 2 principles have emerged. The first is something which is incidental cannot itself be a dwellinghouse or, more importantly, in this case something for the provision of a primary dwellinghouse purpose such as a kitchen or bedroom. Secondly, whilst it is primarily the occupier to determine what incidental purposes he proposes to enjoy, nevertheless, in applying the test as to whether something is required for a purpose incidental to the enjoyment of the dwellinghouse, the test must retain an element of objective reasonableness.
9. The buildings would have a footprint of approximately 190m² which equates to around 49% of the dwellinghouse itself. The Council say that this is significant and the development would not be subordinate to the dwellinghouse itself. However, as the Council recognise, this is not the determinative issue. The size will merely have some relevance in determining the overall test, namely

- whether what is proposed is required for a purpose incidental to the enjoyment of the dwellinghouse as such.
10. The appellant has said that he owns a number of motor vehicles including some historic cars and this has been supported by documentary evidence. The Council accept there is a genuine need for a garage building of some size to house these vehicles. Whilst many people would not require a garage of sufficient size to house 5 cars, in this particular instance, having regard to the representations made, I do find the provision of garaging of this size is required for a purpose incidental to the enjoyment of the dwellinghouse as such, and that its provision is reasonable.
 11. The garage building also houses a plant room for the swimming pool. The provision of a swimming pool is clearly something to be enjoyed incidental to the dwellinghouse itself. It is certainly not the provision of primary accommodation. It has not been suggested by the Council that it is not reasonably required, and I agree that plant room is incidental to the swimming pool. This means, therefore, that I find no objection to the provision of the building intended for garaging and as a plant room.
 12. As regards the proposed second building, the Council asserts that it is unnecessary because the games room, utility, store and work rooms are all uses which could reasonably be housed or accommodated in the dwellinghouse itself. Indeed, they draw to my attention that the plans submitted with an earlier planning application made reference to a games room/studio and utility room.
 13. The appellant says the games room will be used for a variety of purposes including the storage of childrens' toys, (particularly those used for outdoor play in the summer and in association with the use of the swimming pool), to house a snooker table/pool table/table-tennis table, for gym equipment and for arcade machines. My attention has been drawn to the need to have space around the snooker table to enable it to be used properly. I have also noted the plans show a seating area within the games room overlooking the swimming pool.
 14. With regard to the other rooms adjoining the games room, the appellant advises that the work room will be used to store equipment associated with the maintenance of the property and its garden and the utility room will be used ancillary to the games room and swimming pool to provide drinks and refreshments during the summer months.
 15. I recognise that in respect of the games room and utility room there is some degree of duplication. The games room within the host dwelling is, nevertheless, on the second floor and not, in my judgment, suitably located for use associated with outdoor play or the swimming pool. Indeed, I see the attraction to the appellant of having a building separate from the main dwelling for the enjoyment of his children and others for recreational purposes. Moreover, it is not uncommon or unreasonable to have an indoor seating area close by the swimming pool. Likewise, given the overall size of the property and its ground, I find a work room and the other rooms also perfectly justifiable and reasonable in all the circumstances.

16. As mentioned above, it is primarily for the occupier of the dwellinghouse to determine what incidental uses he wishes to enjoy subject to the test of objective reasonableness. In this instance, the main dwelling is large, it is set within a large plot and, for the reasons mentioned, I find it reasonable that the appellant wishes to provide a separate building for recreational and other uses associated with the use of the main property as a dwellinghouse. I am, therefore, satisfied that the appellant has proven on the balance of probabilities that the games room and other rooms within this second building are required for a purpose incidental to the enjoyment of the dwellinghouse as such.
17. I have had regard to the appeal decisions (ref: APP/Q4625/X/09/2113677 and APP/G5180/X/13/2210299) to which my attention has been drawn. The facts of these cases may be similar to an extent but each case has to be determined on its own merits, having regard to the evidence submitted in support. In the other appeals, the Inspectors say they either did not have adequate layout plans or a proper explanation of why such large buildings were required. By contrast, the evidence presented to me is sufficient to demonstrate that the proposed buildings are reasonably required for incidental purposes.
18. In addition to any building erected under Class E of the GPDO being required for a purpose incidental to the enjoyment of the dwellinghouse as such, it also has to meet various conditions and limitations. It has not been suggested that these conditions and limitations are not met and I agree that they have.
19. 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 the erection of 2 single storey detached outbuildings to be used for purposes incidental to the enjoyment of the existing dwellinghouse including for vehicles and games room, play room and gym and swimming pool to the rear of the house was not well-founded and the appeal should succeed. I will exercise the powers conferred to me under S195(2) of the 1990 Act, as amended.

Formal decision

20. The appeal is allowed and attached to this decision is the certificate of lawful use or development describing the proposed operations which it is considered to be lawful.

D Whipps

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 28 October 2014 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged with a thick black line on the plan attached to the Certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The operation would have been permitted development by virtue of article 3(1) of, and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

D Whipps

INSPECTOR

Date 23.10.2015

APPEAL REFERENCE APP/G5180/X/15/3011495

First Schedule

The erection of two single storey detached outbuildings to be used for purposes incidental to the enjoyment of the existing dwellinghouse including for vehicles and games room, playroom and gym and swimming pool to the rear of house as shown on Drawing Nos. BTH-675-PD-10 and BTH-675-PD-G-010

Second Schedule

Beech Tree House, West Hill, Downe, Orpington, Kent BR6 7JJ

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 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, would not have been liable on that date to enforcement action under section 172 of the 1990 Act as amended.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 23.10.2015

D Whipps

D Whipps LLB Solicitor LARTPI

Beech Tree House, West Hill, Downe, Orpington, Kent BR6 7JJ

Appeal Ref: APP/G5180/X/15/3011495

Scale not stated

