

Appeal Decision

Site inspection on 15 February 2017

by John Whalley

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

Decision date: 27 February 2017

Certificate of Lawful Development appeal ref: APP/M5450/X/16/3155054 8 Powell Close, Edgware HA8 7QU

- 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 the failure of the London Borough of Harrow Council to decide on an application for a Certificate of Lawful Development.
- The appeal was made by Mr Benjamin Mire.
- The application, No. P/2020/16, was dated 24 April 2016.
- The application was made under s.191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development is sought is for the erection of a shed in the front garden.

Summary of decision: The appeal succeeds. An LDC is issued

Procedural matter

1. In his final comments on the appeal, the Appellant, Mr Mire, said that he had suffered from what he saw as the Council's level of professional incompetence. He asked that I should comment on that in his favour and, further, determine costs against the Council. However, in the absence of a formal application for an award of costs, against which the Council would have been able to respond to the allegation, it is not appropriate for me to comment on the matter.

The s.191(1)(b) lawful development certificate application

2. The development for which a certificate of lawful development is sought is for the erection of a timber shed in the front garden, albeit mostly to the side of the house at No. 8 Powell Close, Edgware. It was claimed that the shed had become immune from enforcement action by the passage of time. My site inspection showed there were 2 similar, small timber sheds, each having a footprint of about 2m x 2m in the position indicated on the application plan. They had been erected tightly together. Both appeared to be of the same manufacture, both were in the same state of repair.
3. The parties appear to have treated the pair of sheds as forming one shed structure. That seems to be confirmed by the drawing attached to the application. I treat it accordingly.

Considerations

4. The Appellant, Mr Mire, said the shed was about 20 years old. The Council noted that the shed was in a state of disrepair and appeared old. But they said a visual assessment alone was not enough to determine how long the shed had been in place. They had been made aware of a 2005 dated invoice regarding repair work carried out on a shed at No. 8. However, they said it was unclear from that as to where the shed was located, or if it was the same shed as the subject of the current application.
5. My inspection of the state of repair and deterioration of the appeal shed suggested that it had been in place for considerably more than 4 years. That alone is not determinative, but the Council had no evidence to counter Mr Mire's assertion that it was about 20 years old. The burden of proof in a case such as this lies with the Appellant. But where the assertions of an appellant are not shown to be wrong or misleading, it may be reasonable, on the balance of probabilities, to accept the Appellant's case. The agreed state of disrepair of the shed suggesting that it had been in place for considerably more than 4 years before the LDC application was made confirms its success.
6. I conclude that the Council's failure to issue a certificate of lawful development for the application as made was not justified.

FORMAL DECISION

7. The failure of the London Borough of Harrow Council to issue a Certificate of Lawfulness for the erection of a shed in the front garden of No. 8 Powell Close, Edgware HA8 7QU was not justified. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 24 April 2016 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of a shed in the front garden of the dwelling at No. 8 Powell Close, Edgware HA8 7QU was a development that was substantially completed more than 4 years before 24 April 2016.

John Whalley

INSPECTOR

Date: 27 February 2017

Reference: APP/M5450/X/16/3155054

First Schedule

The erection of a timber shed in the front garden of the dwelling.

Second Schedule

The dwelling at No. 8 Powell Close, Edgware HA8 7QU.

IMPORTANT NOTES OVERLEAF

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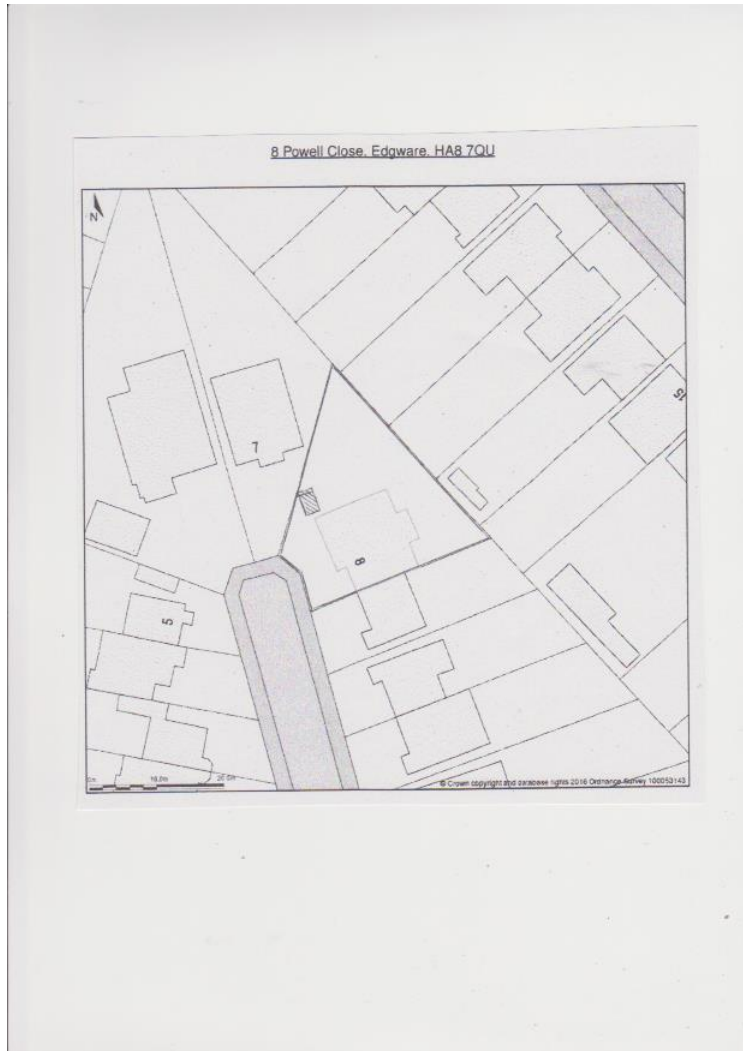
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful, on the certified date and, thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

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Land and shed at No. 8 Powell Close, Edgware HA8 7QU



Plan attached to the Lawful Development Certificate – Do not scale
(Shed shown hatched black within curtilage of No. 8 Powell Close as shown by heavy outline)

John Whalley

INSPECTOR