
Appeal Decisions

Site visit made on 14 February 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 03 March 2017

Appeal A: APP/F5540/X/16/3157749

75 Shakespeare Avenue, Feltham, London TW14 9HU

- 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 George Traykov against the decision of the Council of the London Borough of Hounslow.
- The application, Ref: 01006/75/LAW2, dated 16 May 2016, was refused by notice dated 13 July 2016.
- 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 Proposed Lawful Use or Development (CLOPUD) is sought is the proposed erection of a detached outbuilding to be used solely as an ancillary storage building for a purpose incidental to the enjoyment of the dwellinghouse.

Summary of Decision: The appeal is allowed and a Certificate of Proposed Lawful Use or Development is issued, in the terms set out below in the Formal Decision.

Appeal B: APP/F5540/X/16/3152984

75 Shakespeare Avenue, Feltham, London TW14 9HU

- 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 George Traykov against the decision of the Council of the London Borough of Hounslow.
- The application, Ref: 01007/75/LAW1, dated 16 February 2016, was refused by notice dated 9 May 2016.
- The application was made under Section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a Certificate of Lawful Existing Use or Development (CLEUD) is sought is an outbuilding measuring 6.00m x 5.85m x 2.5m within the curtilage of the dwellinghouse.

Summary of Decision: The appeal is dismissed.

Applications for costs

1. Two applications for costs were made by the Council against the appellant. These applications are the subject of a separate Decision.
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Preliminary Matter

2. The appellant has drawn attention to the fact that the decision notice in respect of Appeal B has the wrong reference number and suggests that this invalidates that decision. I do not share that opinion. It seems to me that this is a simple typing error as it is clear from the remainder of the decision notice that it refers to the application made in respect of an application for a Certificate of Lawful Existing Use or Development (CLEUD) received by the Council on 14 March 2016¹. I do not consider that the appellant has been misled or prejudiced by this error in any way, thus no further action needs to be taken on this matter.

The Appeal Site and Planning History

3. The appeal site comprises a plot of land on the south-western side of Shakespeare Avenue containing a two-storey semi-detached house and its residential curtilage. The house has a single-storey rear extension covering the full width of the property. Internally, I saw that part of the ground floor of the house has been used as a self-contained unit, with a living room/bedroom, kitchen and shower/toilet, including a section within part of the rear extension. A further kitchen with a toilet to the rear is located on the ground floor, whilst the front living room was being used at the time of my visit as a bedroom with two single beds in it. Upstairs are three further bedrooms, two double and one single, and a bathroom. All bedrooms and the self-contained unit on the ground floor have Yale or other secure door locks.
4. An outbuilding of about the same size as that which is the subject of these appeals was the subject of an enforcement notice issued on 3 March 2015. The notice alleged the unauthorised construction of an outbuilding and its use as a non-incidental and self-contained residential unit. An appeal against that notice was dismissed on 9 February 2016². The notice required, amongst other things, the demolition of the outbuilding and the removal of all resultant debris from the land. I saw, at my inspection, that the notice has been complied with in that the building has been demolished. A number of domestic items, including several bicycles, a filing cabinet containing power tools, a stepladder and a wheelbarrow, are currently stored in the open at the foot of the garden within an area covered in gravel. A fabric gazebo has been sited between that area and the main house and contained a table and chairs at the time of my inspection.

APPEAL A

The Case for the Appellant

5. The appellant contends that the proposed building meets all necessary criteria within Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO) and would be used for storage purposes ancillary to the main dwellinghouse. Therefore there is no reason why a Certificate of Lawful Proposed Use or Development (CLOPUD) should not be granted. He considers that sufficient information was provided with his application to enable the Council to assess his proposal and that there is no supportable reason for their refusal.

¹ The application forms are dated 16 February 2016 but the acknowledgement letter, dated 12 April 2016, with the correct reference number of 01007/75/LAW1, states that the application was not received until 14 March 2016.

² CLG Ref: APP/F5540/C/15/3025077.

The Case for the Council

6. The Council, however, contend that, whilst the proposed building would meet the size criteria set out in Class E, the appellant has failed to demonstrate that the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse. In this context, they consider a number of points to be pertinent including that the building would match the scale of that used as a separate unit of accommodation, that conflicting information was provided during the enforcement investigations about occupation of the main house, which appears to have been and remains in use as a House in Multiple Occupation (HMO), and that the only supporting information provided to suggest the building is required for a purpose incidental to the enjoyment of the dwellinghouse was restricted to statements on the application form.
7. The Council also contend that the appellant does not reside at the appeal property, therefore he cannot show that he requires the building for a use incidental to his enjoyment of the house, neither has it been shown that any of the occupants of the HMO require such a building. Finally, they draw attention to two previous appeal decisions where it was found that the appellant had not shown that the outbuilding in question was *required* for an incidental purpose. In this case, the need for the proposed building has not been demonstrated therefore the appeal should be dismissed.

Appraisal

8. The main issue in this appeal is whether the proposed outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at 75 Shakespeare Road. In this context, the burden of proof in an appeal of this nature lies with the appellant³, with the required standard of proof being on the balance of probabilities⁴. I also confirm that the planning merits of the proposed development are not before me in this appeal; the issue relates purely to the question of whether or not the proposed outbuilding would be permitted development having regard to the provisions of Class E of Part 1 of Schedule 2 to the GPDO.
9. The application for the proposed CLOPUD stated that the proposed detached outbuilding would be used solely as an ancillary storage building for a purpose incidental to the enjoyment of the dwellinghouse, but no further information was provided as to what type of storage was intended or how that related to the use of the main house. The appellant expresses concern that the Council did not seek further information on this point before their consideration of the application, but I do not consider that this is a legitimate criticism as the Council should be able to assess an application of this nature solely on the information provided. Indeed clear advice is given in the Planning Practice Guidance (PPG) that *"an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate"*⁵.
10. Further information has, however, now been provided with the appeal, stating that the appellant wishes to use the proposed building for *"storage of domestic*

³ *Nelson v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁴ *Thrasyvoulou v Secretary of State for the Environment* No 1 [1984] JPL a732.

⁵ Planning Practice Guidance paragraph: 005 Reference ID: 17c-005-20140306.

paraphernalia, bicycles, cds, toys, old clothes, old furniture, own personal belongings, hobby & games, books, gardening equipment, lawnmower, gardening tools, DIY power tools, old files etc". Such storage is normal for any building provided within the curtilage of a dwellinghouse, and it is pertinent that there is no other such building, including a garage, within the boundaries of the appeal property.

11. I note that the Council dispute that the appellant lives at the appeal property, and question why, in such circumstances, he would choose to store expensive items in a property that is occupied by unrelated individuals rather than at the property at which he resides. They also question why such storage is now needed when the previous outbuilding on the site, now demolished, was not used for such purposes, rather it was used as a separate unit of accommodation.
12. The Council's contentions relate to their claims that the appellant lives elsewhere and that the appeal property is in use as an HMO. However, use as an HMO would not necessarily preclude the implementation of Class E permitted development rights, and I have seen no firm evidence that the appellant does not live at the appeal property, other than an unsupported assertion by a neighbour that he lives elsewhere.
13. I acknowledge that the Council's appeal statement says that they have supporting information to suggest that the appellant does not reside at the appeal property, through information collected during the enforcement investigation, and that this issue is discussed within the previous appeal decision. However, I am unclear as to what "supporting information" the Council refer to, as that submitted with their statement would tend to confirm that the appellant does live at No 75. For example, the notes of a site visit on 20 August 2014 state that the appellant lived at the property with a girlfriend, and that a female tenant rents two rooms on the first floor. Above all, the application form for the CLOPUD gives the applicant's address as 75 Shakespeare Avenue, as does the appeal form. The declaration at Section 10 of the application form, that any facts stated are true, has been signed by the appellant's professional agent.
14. From what I saw at my site inspection, it appears that the main dwellinghouse may be occupied by a number of individuals, and may be in use as an HMO, albeit that the appellant resides in a part of the house. I have referred to the domestic paraphernalia currently stored in the open at the foot of the garden, and it is clear that there is insufficient space for such items to be stored within the existing house, neither is there any other building available for such storage within the curtilage of the property. It is entirely reasonable, therefore, for an owner to seek to provide a suitable building within the residential curtilage to store items such as gardening equipment, tools, bicycles and other domestic paraphernalia.
15. As for the Council's concerns that the proposed outbuilding could be used as a separate unit of residential accommodation, as was the case with the previous building, I can give little weight to this matter as the Council has powers to ensure that any building erected under the provisions of Class E is used for incidental purposes, and could take enforcement action if it were not. I consider it most unlikely that the appellant would use the proposed building for

such purposes given the fact that he has previously lost an appeal relating to such usage, and been required to demolish the unauthorised building.

16. Finally, I have considered the appeal decisions that the Council has drawn to my attention. However, I do not know the full circumstances behind those decisions and, in any event, I have dealt with this appeal on its own merits in relation to the particular arguments and evidence put before me.
17. In all of these circumstances, and for the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a CLOPUD in respect of an outbuilding measuring 6.00m x 5.85m x 2.5m within the curtilage of the dwellinghouse 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.

APPEAL B

18. This appeal relates to the building that was the subject of the enforcement notice issued in 2015, and the subsequent appeal which was dismissed. That building, however, has now been demolished in accordance with one of the requirements of the upheld notice. However, it was still in place at the date at which the application for a Certificate of Lawful Existing Use or Development (CLEUD) was made.

The Case for the Appellant

19. The appellant's case is that the building was previously used for a different use, as a self-contained residential unit, with a different internal layout. It was not, at that time, an ancillary building and therefore could not be "permitted development". Since the dismissal of the appeal, however, the residential use has ceased, the internal layout has been altered and the building has been used solely for storage purposes as an ancillary outbuilding. A CLEUD should, therefore be granted as the building meets all of the criteria of Class E of Part 1 of Schedule 2 to the GPDO.

The Case for the Council

20. The Council contend that there are two principal reasons why a CLEUD cannot be issued. Firstly, there can be no claim that the building has permitted development rights as these rights cannot be applied retrospectively, as found in various appeal decisions, and in the 2016 appeal decision. Secondly, Section 191(2) of The Act states that a use or operation may be lawful if either (a) no enforcement action may be taken in respect of them, or, (b) they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force. That is the situation here, as the 2015 enforcement notice is in force and it requires the demolition of the building. In addition, it is contended that the appellant has not used the building for a completely different use, as a site visit undertaken in May 2016 indicated otherwise. In all of these circumstances the appeal should fail.

Appraisal

21. The main issue in this appeal is the legal question of whether a CLEUD can be issued notwithstanding the provisions of Section 191(2)(b) of The Act. The same principles relating to the onus of proof resting with the appellant, and the standard of proof, outlined above in respect of Appeal A, apply.

22. In this case, however, the only conclusion that I can reach, notwithstanding the appellant's reasons for seeking a CLEUD, is that the appeal must fail because there is a fundamental conflict between the application and the provisions of Section 191(2)(b) of the Act. A CLEUD cannot be granted where it would conflict with any of the requirements of any enforcement notice then in force. The notice issued in 2015 is in force, following the unsuccessful appeal, and requires that the building in question be demolished. Indeed that requirement has now been met, thus there is no existing building to which any CLEUD could apply. In all of these circumstances, no CLEUD can be granted.
23. For the reasons given above I conclude that the Council's refusal to grant a CLEUD in respect of an outbuilding measuring 6.00m x 5.85m x 2.5m within the curtilage of the dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.

Other Matters

24. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

FORMAL DECISIONS

Appeal A: APP/F5540/X/16/3157749

25. The appeal is allowed and attached to this decision is a Certificate of Lawful Proposed Use or Development describing the proposed operation which is considered to be lawful.

Appeal B: APP/F5540/X/16/3152984

26. The appeal is dismissed.

Martin Joyce

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 16 May 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this Certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed building would constitute permitted development under the provisions of Class E of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended.

Signed

Martin Joyce
Inspector

Date: 03 March 2017
Reference: APP/F5540/X/16/3157749

First Schedule

The erection of a detached outbuilding to be used solely as an ancillary storage building for a purpose incidental to the enjoyment of the dwellinghouse.

Second Schedule

Land at 75 Shakespeare Road, Feltham, London TW14 9HU

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, 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 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: 03 March 2017

by **Martin Joyce DipTP MRTPI**

Land at 75 Shakespeare Avenue, Feltham, London TW14 9HU

Reference: APP/F5540/X/16/3157749

Scale: Not to scale

