
Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/E5330/X/20/3257844
5 Haimo Road, Eltham, London SE9 6DZ

- 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 Alex Iwuoha against the decision of Royal Borough of Greenwich Council.
- The application Ref 20/1446/CP, dated 21 May 2020, was refused by notice dated 27 July 2020.
- 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 construction of an outbuilding in the rear garden.

Summary 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. The description in the heading above is taken from the Council's decision notice as it more succinctly describes the development compared to the appellant's description on the application form. It is also the same description the appellant has used on the appeal form and in doing so he has agreed to the Council's description.
2. The purpose of an LDC application is to determine whether specified uses or operations would have been lawful on the date the application was made, which in this case is 21 May 2020. As an LDC is not a planning application, the planning merits of the case do not fall to be considered.
3. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.

Main Issue

4. In this case the main issue is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

5. The case turns on whether the proposed outbuilding in the rear garden for use as a home office would be permitted development (PD) and benefit from planning permission granted by Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'). The Council advise that there are no Article 4 Directions in place which would restrict the use of PD rights, that the site does not lie within a Conservation Area and the dwelling is not a Listed Building.

6. Part 1 of Schedule 2 addresses development within the curtilage of a dwellinghouse. The appellant says that the proposed outbuilding at the rear of the garden falls within Class E of Part 1 in that it is for a 'purpose incidental to the enjoyment of the dwellinghouse...' and would not exceed any of the height limitations. Paragraph E.1(e)(ii) limits the height of any building to 2.5 metres where the building is within 2 metres of the boundary of the curtilage of the dwellinghouse, and paragraph E.1(f) limits the height to the eaves of any building to 2.5 metres.
7. The Council contend that they are unable to confirm the height of the building from the submitted plans. The Planning Practice Guidance¹ makes clear that the applicant (in this case the appellant) is responsible for providing sufficient information to support an LDC application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
8. Drawing ALX/2/163 shows the elevations of the proposed outbuilding, but any measurements would have to be scaled off. The Council has measured the height of the outbuilding as 3.17 metres and the height to the eaves as 2.68 metres, which would exceed the PD allowances listed above.
9. Another drawing, unreferenced but labelled 'Office Unit at the Back Garden of 5 Haimo Road' shows the front elevations of the proposed outbuilding and the internal layout. This drawing is a supplementary and more detailed version of the elevation plan ALX/2/163. The drawing is annotated with written dimensions, even specifying the width of the entrance door and windows. It clearly shows the overall height of the building would be 2500mm (2.5 metres) in height. It follows, from the design of the outbuilding, that the height to the eaves would not exceed 2.5 metres either.
10. I therefore find that the appellant has provided plans and a description of sufficient clarity and precision to enable me to understand exactly what is involved. Hence the proposed outbuilding would be constructed to dimensions that comply with the PD limitations in order to benefit from planning permission. Furthermore, the appellant's full description on the application form stipulated the maximum height of the outbuilding would be 2.5 metres.
11. The PD limitations set out in the GPDO are expressed precisely such that something is either PD or not PD. Any increase in height of the outbuilding would mean the building would not be lawful.
12. Notwithstanding the dimensions of the proposed outbuilding, it is crucial that Class E buildings are built for a purpose "incidental" to the enjoyment of the dwellinghouse. In its delegated report the Council quotes from the appellant that the proposed office building would be primarily for himself, and that staff would visit as and when required. In the Council's view this would take the proposed use beyond the remit of home working and purposes 'incidental' to the dwellinghouse.
13. Limitation E.4 of Class E explains that an incidental purpose includes the keeping of pet animals or other livestock for the domestic or personal enjoyment of the occupiers of the dwellinghouse. This is of limited help in this

¹ Paragraph: 006 Reference ID: 17c-006-20140306

case when the plans show the building would be used as a home office. The government's Technical Guidance² helps homeowners understand how they can exercise their rights to carry out development and offers further clarification. In respect of Class E it says that there can be a large range of other buildings that can include garden sheds, other storage buildings or garages. It also states that an incidental purpose would not include the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.

14. Of further assistance on this matter, the Courts have held that an essential feature of an incidental use is that it should have a functional relationship with the primary use, which in this case is residential. The use also needs to be considered with regard to the type and size of the dwelling and its curtilage, as well as the scale and nature of the proposed incidental activity. The use should remain subsidiary to the primary use and the relationship should be one that is normally found. Whether a use is incidental is therefore a matter of fact and degree.
15. The 'Office Unit' drawing shows the internal layout to have a separate office and another larger area with what appears to be a desk with two chairs and a sofa seating area, which would seem to indicate provision for more than one person. However, the appellant works for a publishing company, but states in his Statement that he confirmed with the Council there would be no visitors. He also states there would be no employed members of staff, but that his 22-year son would sometimes provide assistance as and when required to help with video editing and social media marketing aspects of the job.
16. The appellant lives at the appeal property, which is a modest sized dwelling, with his wife and three sons. It is not uncommon or unreasonable for people to work from home and need space to do so. An outbuilding of the kind proposed in the rear garden for use as a home office, instead of using space within the dwelling which may not be possible or available, is not uncommon. Nor is it unreasonable in my view.
17. The size of the proposed outbuilding itself is also modest in relation to the dwelling and garden. Its configuration within the planning unit means it can only be accessed either from the dwelling or via the pedestrian path that runs alongside the dwelling, as shown on the proposed location and site plan. I find these factors would serve to constrain its use.
18. I am satisfied, as a matter of fact and degree, that the proposed outbuilding would not contravene the PD size limitations in the GPDO and its use as a home office would be reasonably and sensibly related to the dwellinghouse for a purpose incidental to the enjoyment of the occupiers of that dwellinghouse. It therefore follows that it would fall within Class E.
19. I have based my assessment and decision on the details provided and on the manner of occupation and use described to me by the appellant and not on what might or could potentially occur in the future. If the building was used in a different manner from that put to me, or there was any change to the circumstances or any of the factors I have considered, then the use may no longer be lawful.

² Permitted development rights for householders - Technical Guidance Published by MHCLG Sept 2019

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC for the construction of an outbuilding for use as a home office 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 accordingly.

Formal Decision

21. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

K. Stephens
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 21 May 2020 operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 construction of an outbuilding for use as a home office, as described in the statement accompanying the application and shown on submitted plans ALX/2/170, ALX/2/163 and drawing entitled 'Office unit at the back garden of 5 Haimo Road', would not exceed 2.5 metres in height and would be for purposes incidental to the enjoyment of the dwellinghouse and would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

K Stephens

Inspector

Date: 30 March 2021

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First Schedule

Construction of an outbuilding in the rear garden, as shown on submitted plans ALX/2/170, ALX/2/163 and drawing entitled 'Office Unit at the Back Garden of 5 Haimo Road'

Second Schedule

Land at 5 Haimo Road, Eltham, London SE9 6DZ

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: 30 March 2021

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Scale: Not to scale

