



Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2021

Appeal Ref: APP/K5600/X/21/3266865
26 Victoria Road, London W8 5RG

- 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.
- The appeal is made by Mr Satha against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref CL/20/06327, dated 12 November 2020, was refused by notice dated 11 January 2021.
- 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 replacement of raised planter with hardstanding.

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

Procedural Matters

1. The applicant for the LDC application was Mr Satha. The appeal has been made by Mr and Mrs Marcus Satha. Ordinarily only the applicant can make the appeal which cannot be transferred to another person. Hence, the appellant's name in the heading above is the applicant Mr Satha.
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. The burden of proof rests with the appellant and the test of the evidence and decision is made on the balance of probabilities.
3. An LDC is not a planning application and the case must be considered solely on the facts, the relevant planning law and judicial authority. Any planning merits do not fall to be considered. Consequently, issues surrounding the tree and Storm Brendan are not taken into account, nor are any letters from third parties that raise concerns over setting a precedent for loss of flower beds/planters for the creation of parking spaces and the resultant effect on the character and appearance of the Conservation Area. Concerns about increased water run-off road is intrinsically addressed in the permitted development requirements described below.
4. It is apparent from the appellant's correspondence with the Planning Inspectorate and the Council that works may have already started to remove the planter and install the hardstanding. Notwithstanding if works have now been carried out, I must determine whether the proposed development, as described in the heading above and shown on the submitted plans and accompanying information, would have been lawful against any Order in force at the time the application was made on 12 November 2020.

5. The LDC refusal notice refers to the hard surface being contrary to condition F.2 of Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'). Reference to 'Class E' would appear to be a typographical error that has been replicated from the Council's delegated report. Class E refers to outbuildings whereas Class F relates to hard surfaces. The refusal reason goes on to describe the proposed development as hardstanding or a hard surface. Furthermore F.2 is a condition under Class F not Class E. Evidence from both parties also clearly relates to Class F development. I shall proceed on that basis.
6. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence and facts from both parties.

Main Issue

7. The main issue is whether the Council's decision to refuse the LDC application was well-founded. This turns on whether the proposed area of hardstanding, shown on the submitted plans and described in additional information, would have constituted permitted development and be granted planning permission under Article 3 and Schedule 2, Part 1, Class F of the GPDO.
8. The Council's delegated report confirms that the appeal property is not a listed building but lies within De Vere Conservation Area, which is subject to an Article 4 Direction¹. However, the Article 4 Direction does not restrict the use of permitted development rights for hard surfaces, nor are there any conditions that would otherwise restrict the proposed development.

Reasons

9. Class F of the GPDO allows the provision of a hard surface within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse.
10. There are a number of conditions set out under F.2 for which development is permitted. Condition F.2(a) stipulates that the hard surface would need to be situated on land between a wall fronting the principal elevation of the dwellinghouse and the highway. Condition F.2(b) stipulates that where the ground covered by the hard surface or the area of hard surface replaced would exceed 5 square metres, then either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area of surface within the curtilage of the dwellinghouse.
11. The area of ground the subject of this application is a raised planter bed between the principal elevation of the dwellinghouse and the highway. It would be removed and replaced with an area of hardstanding or hard surface approximately 12 square metres in area. The proposed development would effectively extend the appellant's private driveway. Being over 5 square metres, the proposed hard surface would need to be made of porous materials or some provision made for direct run-off water within the curtilage of the dwellinghouse.

¹ There appear to be typographical errors referring to an Article VI Direction, which is later referred to as Article IV Direction.

12. Section 192(2) of the Act allows a Council to refuse an LDC application if they are not provided with information to satisfy it that the proposed operations described in the application would be lawful. The Procedure Order² sets out what is required to be submitted. In addition, the Planning Practice Guidance³ 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, the applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
13. The LDC application comprised an application form and a number of plans. Drawing 1 Rev A has a location and site plan and two street-view photos showing the front of the property, the vegetated planter area and the highway. Drawing 2 Rev A is an existing and proposed forecourt plan and elevations, showing the raised planter that would be removed and the area to be hard surfaced.
14. Nonetheless the plans are not annotated to describe or confirm that the proposed area of hardstanding would be made of porous material, or that provision would be made for managing water in order to direct run-off water to a permeable or porous area within the curtilage of the dwellinghouse. On the application form the appellant merely cites the various conditions and limitations of Class F. I find the application overall lacked the clarity and precision required to help the Council understand exactly what was involved, and in my view the Council was entitled to suggest that additional information would be required.
15. Paragraph 38 of the National Planning Policy Framework does not assist when considering an LDC application because, as already described, planning merits are not taken into account. The Council's confirmation that the application was valid does not preclude it from asking for more information at a later stage to satisfy itself that the proposed development would be lawful.
16. The appellant did submit additional information in the form of a one-page document containing details and specification of a resin bound hardstanding entitled a 'Permeable Private Driveway'. The Council declined to consider the information because it does not accept amendments/further information to LDC applications. Neither the Act, Procedure Order nor the PPG guidance preclude the Council from accepting additional information during the determination of an LDC application, even if that information was not provided at the point the application was made.
17. I have before me the additional 'Permeable Private Driveway' information that shows how the resin bound hardstanding would be integrated with various sub layers as part of its construction to create a permeable and SuDS⁴ compliant driveway.
18. I am satisfied that the proposed hardstanding or hard surface for a private driveway, as shown on the plans and described in the submitted additional specification information, would accord with condition F.2 of Class F of the GPDO. It therefore follows that the hardstanding or hard surface would have

² The Town and Country Planning (Development Management Procedure) (England) Order 2015.

³ Paragraph: 006 Reference ID: 17c-006-20140306.

⁴ Sustainable Drainage Systems

been permitted development under Class F and hence lawful at the time the application was made.

19. I have based my assessment and decision on the details provided and described to me by the appellant and not on what might or could potentially occur in the future. If the hardstanding or hard surface is constructed to a different size of area, or in a different location, or in a manner different from that put to me then the LDC may be of no benefit. Similarly, if there was any change to the circumstances or any of the factors I have considered, then the development may no longer be lawful.

Conclusion

20. For the reasons above I conclude, on the evidence available, that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

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

K Stephens
INSPECTOR



The Planning Inspectorate

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 12 November 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in 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 approximate 12 square metres of hardstanding or hard surface, as shown on the submitted plans and constructed in the manner shown on the specification titled 'Permeable Private Driveway' would be granted planning permission by Article 3 and Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

K Stephens

Inspector

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First Schedule

Replacement of raised planter with hardstanding as described in the updated application ref: CL/20/06327 and shown on Drawing No.1 Rev A and Drawing No.2 Rev A.

Second Schedule

Land at 26 Victoria Road, London W8 5RG

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, was 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.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 June 2021

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Scale: Not to scale

