



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Appeal Ref: APP/E5330/X/21/3269071

9 Kinlet Road, Plumstead SE18 3BZ

- 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 J Monteiro against the decision of Royal Borough of Greenwich Council.
 - The application Ref 20/3613/CP, dated 23 November 2020, was refused by notice dated 18 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 the erection of a single-storey, flat roofed timber-clad outbuilding (6.8x5.1x2.5metres) within the curtilage of a dwellinghouse, for uses incidental to the enjoyment of the dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Application for Costs

2. An application for costs was made by Mr and Mrs Monteiro against the Royal Borough of Greenwich Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Planning Inspectorate initially intended for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
4. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient evidence to understand the nature of the site and surrounding area given the points in dispute. On that basis, as the appointed Inspector I consider I can proceed to a decision on the evidence before me.

Main Issue

5. No issues of planning merit are relevant to any LDC appeal. The planning merits of what has been applied for cannot be taken into account. Thus, any submissions made by interested persons relating to the planning merits of the proposal are not factors to which I can attribute weight.
6. The main issue for the appeal is solely whether the Council's decision to refuse the application for an LDC was well-founded, with particular regard to whether the development would be granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

7. Article 2(3) land is defined within the GPDO as land within (a) an area designated as a conservation area. The appeal site lies within the Shrewsbury Park Estate Conservation Area.
8. Article 3(1) of the GPDO grants planning permission for the classes of development defined as permitted development under Schedule 2. Class E of Part 1 of Schedule 2 states that the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such is permitted development. Development is subject to the limitations under paragraphs E.1 to E.3.
9. Paragraph E.3 states that in the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.
10. The proposed development is the erection of a detached building within the rear garden of the appeal property, a semi-detached dwelling. It would be located beyond the rear wall of the house and adjacent to the rear boundary of the garden. Due to the shape and arrangement of the rear gardens on this part of Kinlet Road, the side boundary of the garden adjoining No 11 is located beyond the side elevation of the appeal property.
11. In assessing the application in its officer report, the Council has drawn a straight line from the side wall of the house down the garden. Part of the proposed outbuilding would extend up to the shared boundary with No 11 and therefore beyond the line the Council has drawn. As such, the Council say the proposed building would fail to comply with Paragraph E.3.
12. However, paragraph E.3 is clear that development is not permitted by Class E if any part of the building would be situated on land 'between' a wall forming the side elevation and the boundary of the curtilage. The term 'between' is not defined in the GPDO. Nonetheless, the OED definition of between is, "at, into, or across the space separating two things". On that basis, it seems to me that the building would not be situated on land in the space between the side wall of the house and the boundary of the curtilage.

13. Moreover, the Permitted Development Rights of Householders Technical Guidance published by MHCLG¹ in September 2019 contains an explanatory diagram to demonstrate the limitation in paragraph E.3. It shows the outline of a house with shaded areas either side. The shaded areas do not extend beyond the front or rear walls of the house. The guidance states that buildings within the shaded areas are not permitted development. Whilst not stated, it is inferred from the decision to shade only those areas either side of the house that the technical guidance sets out the inverse – that buildings outside of the shaded areas would not be caught by the limitation under E.3.
14. The appeal proposal would not be located within the area to the side of the house. Considering the ordinary meaning of the word 'between' and the technical guidance, I am satisfied that the location of the building would not be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of its curtilage. As a result, the proposed development would not fail to meet the limitation under paragraph E.3.
15. The Council's officer report indicates that the proposal would not fall under any of the other limitations set out in paragraphs E.1 or E.2. I have no evidence before me to believe otherwise.
16. I conclude, therefore, that at the date the application was made the development would have been granted planning permission under Article 3(1) of the GPDO and thus would have been lawful.

Conclusion

17. 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 erection of a single-storey, flat roofed timber-clad outbuilding (6.8x5.1x2.5metres) within the curtilage of a dwellinghouse, for uses incidental to the enjoyment 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.

J Whitfield

INSPECTOR

¹ The then Ministry for Housing, Communities and Local Government



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 dated 23 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 building operations would be granted planning permission by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development permitted under the provisions of Class E of Part 1 of Schedule 2.

Signed

J Whitfield

Inspector

Date: 04 October 2021

Reference: APP/E5330/X/21/3269071

First Schedule

The erection of a single-storey, flat roofed timber-clad outbuilding (6.8x5.1x2.5metres) within the curtilage of a dwellinghouse, for uses incidental to the enjoyment of the dwellinghouse.

Second Schedule

Land at 9 Kinlet Road, Plumstead SE18 3BZ

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:

by J Whitfield BA (Hons) DipTP MRTPI

Land at: 9 Kinlet Road, Plumstead SE18 3BZ

Reference: APP/E5330/X/21/3269071

Scale: Not to scale

