



Appeal Decision

Site visit made on 25 April 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal Ref: APP/L5810/X/21/3281757

River Thames Visitor Centre, Riverside, Richmond TW10 6UJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Barry Edwards (EcoSHEQ Ltd) against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 21/1783/ES191, dated 17 May 2021, was refused by notice dated 22 July 2021.
 - 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 use or development is sought is ventilation and extraction in use since 11/6/2006.
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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 existing operation which is found to be lawful.

Preliminary Matters

2. At section 6 on the LDC application from it is indicated that the use began more than 10 years before the date of the application and that the building works were substantially completed more than four years before the application. However, it is clear from the submitted evidence that while ventilation and extraction arrangements may have been in place from when food and drink started to be sold on the premises, the application is related to the installation of the venting and extraction units only and not the food and drink use. I shall consider the appeal accordingly.
3. The outcome of the appeal is based on a legal determination that has no regard to matters of planning merit.

Main Issue

4. The main issue is whether the Council's decision was well founded.

Reasons

5. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice in force. No enforcement notice has been brought to my attention related to the venting and extraction units.

6. S55(2)(a) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which (i) affect only the interior or (ii) do not materially affect the external appearance of the building. There is no evidence that the Council approached the application other than considering the visitor centre being a building on which operational development had been carried out. I note that it received planning permission for retention of its mooring in 2006.
7. Given the above, even if the units inside may have changed their appearance since first being installed, the works affect only the interior of the premises and so no matter what they look liked originally or now, they did not constitute development. Turning to the outside, the Council acknowledges that the extractor ducting is largely concealed from view underneath decking at the rear of the visitor centre. To see the vents close up at my site visit I had to kneel and stoop down low to peer under the decking. The vents are pretty much concealed from view. The only place I was able to see them was at a distance from the bridge over the river. Even then they were hardly visible. I was looking for them because I knew they were there, but to any passer-by, they would not be noticeable. They have had no material effect on the appearance of the visitor centre. Consequently, they do not constitute development.
8. In view of the above, notwithstanding the focus by the parties on whether the venting/extraction units have been in situ for more than four years as operational development, I must have regard to s191(2)(a) of the 1990 Act and assess first whether the works constitute development at all. For the reasons given, they do not and thus they are lawful.

Conclusion

9. Therefore, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of venting and extraction units 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.

Gareth Symons

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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 May 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

They do not constitute development.

Signed

Gareth Symons

Inspector

Date: 5 May 2022

Reference: APP/L5810/X/21/3281757

First Schedule

Ventilation and extraction units

Second Schedule

Land at River Thames Visitor Centre, Riverside, Richmond TW10 6UJ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 5 May 2022

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Land at: River Thames Visitor Centre, Riverside, Richmond TW10 6UJ

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Scale: Not to Scale

