
Appeal Decision

Site visit made on 13 June 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 28 June 2022

Appeal Ref: APP/K1128/X/21/3282827

6 Broomborough Drive, Totnes TQ9 5LT

- 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 Ms Katherine Trenshaw against the decision of South Hams District Council.
 - The application Ref 2673/21/CLP, dated 5 July 2021, was refused by notice dated 10 August 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is Erection of a garden building within the curtilage of the dwelling for the personal use of the applicant as an artist's studio/workshop.
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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 extent of the proposed operation which is found to be lawful.

Reasons

2. Section 192(1)(b) provides for the making of an application to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful at the time that the application was made.
3. In this case, the Appellant seeks a certificate to show that the erection of an garden building would be permitted development ('PD') by reason of the terms of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, ('the GPDO').
4. The onus lies with the Appellant to make her case on the balance of probabilities. The main issue is whether the Council's decision to refuse to issue a certificate under s192 was well-founded, having regard to the provisions of Class E.
5. 6 Broomborough Drive ('No 6') is an end-of-terrace, two storey dwelling on a residential cul-de-sac. The land rises away from the road, as a result the dwelling is higher than the road and its rear garden rises away from the rear of the house. Initially, this garden area is of much the same width as those in the remainder of the terrace. However, the plan shows that it widens considerably at its upper level where it extends to much of the full width of the terrace.

6. The proposed building would be erected in the upper level of the garden, in line with No 6. Land in this area had been excavated and trenches for footings had been dug when I visited the site. Notwithstanding this, I was able to appreciate the sloping nature of the land.
7. The Council refused to issue the certificate on the ground that the proposed outbuilding would not accord with the height restriction in Class E.1(f). This states that the height to the eaves of the building should not exceed 2.5m.
8. The eaves height of a building and how to measure it are not defined in the GPDO. Guidance on these matters is found in the Government's 'Permitted development rights for householders: Technical Guidance' September 2019 ('TG'). Definitions in its 'General Issues' include that the height is measured from ground level, this being the ground immediately adjacent to the building in question. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.
9. Guidance on the height of a building for the purposes of Class E.1(f) is found on page 43 of the TG. Here, eaves is defined as being the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building. However, the TG goes on to say, "*The Guidance on Class A (d) above includes examples and further guidance (see page 12)*". Notwithstanding that Class A(d), relates amongst other things to extensions to dwellinghouses, that part of the TG can be used to assist in determining the height of outbuildings.
10. The guidance on page 12 gives drawn examples for measuring eaves height, one of which is similar to that on page 43. However, all show a uniform ground level which is not the case in this appeal. Guidance for measuring eaves heights on sloping land is found on page 13 of the TG. Again, I find that this can be applied to Class E buildings.
11. Given that the ground level to be used is the highest part of the surface of the ground next to the building, then in the case before me the measurement of eaves height should be taken from the point where the proposed building would be furthest up the slope. From here, the height to eaves level would be 2.4m; therefore, within the prescribed height in Class E.1(f).
12. A drawing on page 13 of the TG illustrates that a horizontal line should then be 'drawn' through the building from the eaves line on the upper side of a building on sloping ground. If the other eaves lines of the building do not lie above the horizontal level of this line, the building would accord with Class E.1(f), even if they might exceed 2.5m.
13. When this exercise is applied to the proposed outbuilding, both eaves' lines would be horizontally aligned. Whilst the 'downslope' eaves height from adjacent ground level would far exceed 2.5m, it would, nonetheless, accord with the terms of Class E.1(f).
14. Although the Council has only referred to Class E.1(f), I have nonetheless applied the other tests of whether the building would be PD. At the application stage, the Appellant clarified that the building would be used as an artist's studio/workshop that the Council agreed would be incidental to the use of the dwellinghouse. I have no reason to find otherwise.

15. For the most part, it is clear that the proposed building accords with the caveats to Class E in E.1, E.2 and E.3.
16. I say 'for the most part', as the building is quite high and is designed with window openings at three levels. As the submitted drawing contained no floor plans or section through the building, I could not be sure that there was not more than one storey. If this was to be the case, it would not accord with Class E.1(d) *"the building would have more than a single storey"*.
17. I wrote to the parties to ask for their views on this matter. Amongst other things, the Appellant replied "that the proposed building is split-level internally (to accommodate the site levels) so is still to be regarded as a single-storey building". The Council stated that it "assessed the building as a single-storey building, despite its height, due to the absence of floor plans indicating otherwise. Officers were also mindful of the fact that the building was proposed to be used as an artist's workshop/studio which could potentially require greater space in which to work without requiring additional storeys". From these two pieces of information, I find that the building would not have more than one storey.
18. Therefore, on the balance of probability and taking the available evidence into account, I find that the proposed outbuilding would be lawful under Class E of the GPDO.
19. For all of the above reasons and having considered all other matters, I conclude that the Council's decision to refuse the LDC was not well-founded. The appeal should succeed.

Roy Curnow

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 5 July 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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 garden building would be permitted development in accordance with the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

Roy Curnow
Inspector

Date: 28 June 2022

Reference: APP/K1128/X/21/3282827

First Schedule

Erection of a garden building within the curtilage of the dwelling for the personal use of the applicant as an artist's studio/workshop.

Second Schedule

Land at 6 Broomborough Drive, Totnes TQ9 5LT

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: 28 June 2022

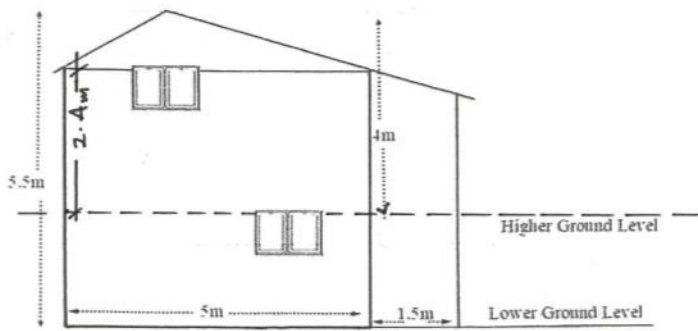
by Roy Curnow MA, BSc(Hons) CMS MRTPI

Land at: 6 Broomborough Drive, Totnes TQ9 5LT

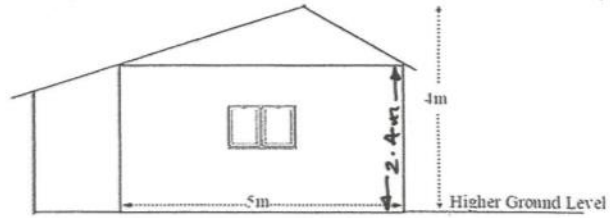
Reference: APP/K1128/X/21/3282827

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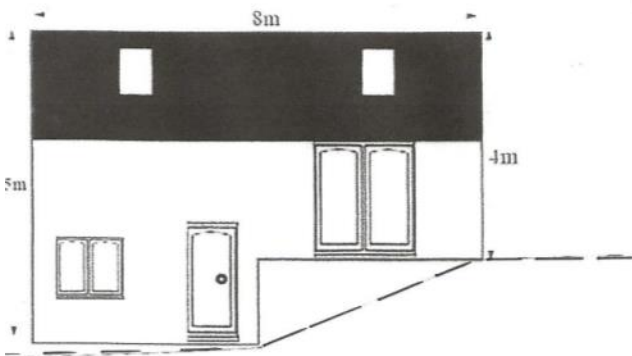




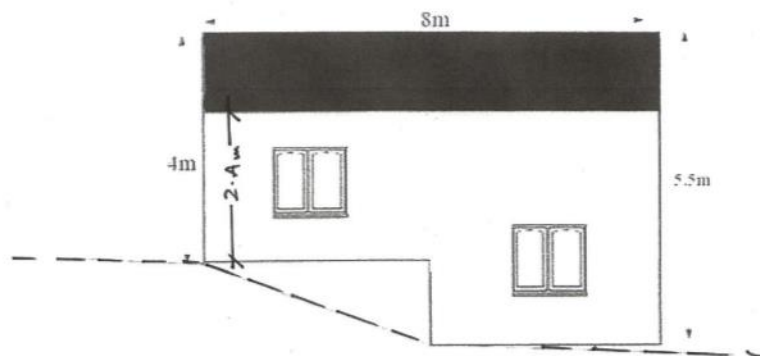
Eastern Elevation



Western Elevation



Northern Elevation



South Elevation