



Appeal Decision

Site visit made on 24 August 2022

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/K5600/X/22/3299065

15 Pembroke Place, London W8 6ET

- 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 Raj Sharma against the decision of Royal Borough of Kensington and Chelsea.
- The application ref CL/21/06795, dated 22 October 2021, was refused by notice dated 31 December 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 installation of air source heat pump on the roof.

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 found to be lawful.

Applications for costs

2. An application for costs was made by Mr Raj Sharma against the Royal Borough of Kensington and Chelsea. This application is the subject of a separate Decision.

Reasons

3. The application seeks to establish whether the installation of an air source heat pump (AHSP) on the roof the dwelling would be lawful. I am aware that an AHSP has been installed but I have determined the appeal on the basis of the submitted details. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's deemed refusal to issue an LDC was well-founded or not.
4. The Council has refused the application as it found that the development would fail to comply with the limits and conditions of Class G.3(b) and (c) of Part 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), and is therefore unlawful. Class G permits the installation or alteration of air source heat pumps on domestic premises. Paragraphs G.1 and G.2 set out a number of limitations to that right, including that development is not permitted unless the AHSP complies with the MCS Planning Standards¹ or equivalent. Paragraph G.3 sets out conditions that must

¹ Paragraph P Interpretation of Part 14 of the GPDO defines MCS Planning Standards as the standards specified in the Microgeneration Certification Scheme for air source heat pumps, being MCS 007.

- be complied with. Condition G.3(b) requires that the pump is, so far as practicable, sited to minimise its effect on the external appearance of the building, while condition G.3(c) requires that it is sited so as to minimise its effect on the amenity of the area.
5. The decision therefore turns on whether the AHSP would be, so far as practicable, sited to minimise its effect on a) the external appearance of the building, and b) the amenity of the area.
 6. The AHSP is proposed to be sited on the top of the building, on an area of flat roof. I saw that due to the siting and proportion of the building, the AHSP would be discernible from street level and from some neighbouring properties. However, it would be set back from the front elevation beyond the roof ridge and this would minimise its effect on the external appearance of the building. Due to its position on the roof in relation to neighbouring properties, the effect on amenity would be minimised.
 7. I accept that the AHSP would have less effect on external appearance and amenity if it were to be located on the rear terrace or within the loft space, as suggested by the Council. However, on appeal the appellant has stated that the site inspection required by the MCS Planning Standards found that only the main roof could comply with the technical requirements. The appellant has explained that if the ASHP were to be sited on the rear terrace, the recirculation of cold air with negative buoyancy enclosed within the terrace could drive the local air temperature down and prevent the ASHP from working properly. Similarly, the suggestion of siting the ASHP within the front main roof void is not practicable, as the unit needs to stand proud of the roof so cannot be enclosed. I am satisfied that these two alternative options for the siting of the pump are not practicable.
 8. The Council has further suggested that if the ASHP has to be sited at roof level, it could be set against the western edge of the roof, where it would be seen within the context of the chimney pots which would reduce its visual impact. This siting would conflict with the limitations in paragraph G.2 of the GPDO and therefore planning permission would be required. However, I do not agree that this siting would minimise the effect on external appearance, as the unit would still be visible above the roof line and it would clutter and detract from the distinctive rhythm of chimneys visible on the terrace.
 9. I am therefore satisfied that, as proposed, the AHSP would be sited so as to minimise its affect on the external appearance of the building and the amenity of the area. It would therefore comply with the conditions set out in G.3(b) and G.3(c) of the GPDO.
 10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate in respect of the installation of air source heat pump on the roof 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.

N Thomas

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 22 October 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 operations are permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas
INSPECTOR

Date: 12 October 2022
Reference: APP/K5600/X/22/3299065

First Schedule

The installation of air source heat pump on the roof

Second Schedule

Land at 15 Pembroke Place, London W8 6ET

IMPORTANT NOTES – SEE OVER

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, 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 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: 12 October 2022

by **N Thomas MA MRTPI**

Land at: 15 Pembroke Place, London W8 6ET

Reference: APP/K5600/X/22/3299065

Scale: Not to Scale

