



Appeal Decision

Site visit made on 4 January 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/Y3615/X/21/3289568

St Martha's Prior, Halfpenny Lane, Chilworth, Guildford GU4 8PZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Richard Rivers against the decision of Guildford Borough Council.
 - The application Ref 21/P/00887, dated 21 April 2021, was refused by notice dated 4 November 2021.
 - The application was made under section 191(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is described as "two sheds are lawful having been substantially completed more than four years before the date of this application".
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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 considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. For the avoidance of doubt, the planning merits are not relevant to an appeal under Section 195 of the 1990 Act. The effect on the Green Belt, the Area of Outstanding Natural Beauty, the Area of Great Landscape Value and the grade II listed building, St Martha's Priory, have not been considered since this would concern the planning merits.
3. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action has expired. Under Section 171B(1) - where there has been a breach of planning control consisting in the carrying out without planning permission of building operations....*"no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed"*. The application sought confirmation that the two sheds were lawful because they had been substantially completed in November 2016. The Council accepts that the sheds have been substantially completed for more than four years, however, it is argued that they comprise a material change of use of the land. The compliance period relevant to a material change of use is ten years beginning with the date of the breach (Section 171B(3)). Ten years has not elapsed and so the Council concluded the development was not lawful.

4. The Council's argument is based on the premise that the sheds are located beyond the curtilage of the property and comprise a change of use to a residential use. However, I must consider whether the sheds should be considered operational development or a material change of use.

Main Issue

5. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. Section 55(1) to the 1990 Act says that the word '*development*' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to establish the correct planning unit and the present and previous primary use. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct and occupied for different and unrelated purposes.
7. The planning unit in this case equates to the house, St Martha's Priory, and its associated grounds. The sheds have been erected within the grounds and are used for domestic storage. There is no evidence that their use is unconnected with the residential occupation of the premises, which would indicate a separate planning unit had been created, nor that a different primary use has been introduced into the same planning unit resulting in a mixed use. The Council argues that the sheds are sited outside of the curtilage, but curtilage must not be confused with the planning unit or with a use of land. The two will sometimes cover the same area but that will not always be the case.
8. On the other hand, the appellant maintains that the sheds should be considered to be operational development. Section 55(1A) says that for the purposes of the Act '*building operations*' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. The erection of an entirely new building is not specifically mentioned, however, it falls within the definition as work normally undertaken by a person carrying on business as a builder.
9. I saw the sheds are solid and sound structures of a rectangular form with pitches roofs. They are constructed from timber, with felt roofs, and appear to be sited on compacted earth. One shed has a tap attached to it, which is connected to a water supply. Given the manner and nature of the work involved in the erection of the structures, and their physical construction and size, their siting required an element of pre-planning and necessitated erection in accordance with a specific end use in mind. I consider that the sheds amounted to operational development because the works involved the carrying out of building operations, which resulted in entirely new buildings.

10. For completeness, I have also considered whether the sheds should be considered to be buildings. Section 336(1) of the 1990 Act includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. In *Cardiff Rating Authority*¹, which was endorsed by the Court of Appeal in *Skerritts*, three primary factors were identified as decisive of what was a '*building*' and these are as follows: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.
11. Although the sheds are sizeable, it is possible that they were brought on to site fully constructed. Nonetheless, there is no evidence that the sheds have moved since they were first sited and they seem to be permanently located. Although there is no physical attachment to the ground, other than the water supply, the structures are immobile by their own weight. On the particular circumstances of this case, they can reasonably be described as structures that fall within the definition of the word '*building*' in s336(1).
12. I have found that the sheds are operational development for the purposes of Section 55(1) of the 1990 Act. Therefore, the relevant time period to gain immunity is four years beginning with the date on which the operations were substantially completed. There is no dispute that the sheds have been substantially completed for more than four years. They are, thus, lawful according to Section 191(2) since no enforcement action may be taken in respect of them due to the passage of time.

Conclusion

13. 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 two sheds 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.

Debbie Moore

Inspector

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 and *Skerritts of Nottingham Ltd v SSETR* [2000] JPL 1025.



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 21 April 2021 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The two sheds are operational development for the purposes of Section 55(1) of the Town and Country Planning Act 1990. Therefore, the relevant time period to gain immunity is four years beginning with the date on which the operations were substantially completed. The sheds have been substantially completed for more than four years. They are, thus, lawful according to Section 191(2) of the 1990 Act since no enforcement action may be taken in respect of them due to the passage of time.

Signed

Debbie Moore

Inspector

Date: 20 January 2023

Reference: APP/Y3615/X/21/3289568

First Schedule

Two sheds

Second Schedule

Land at St Martha's Prior, Halfpenny Lane, Chilworth, Guildford GU4 8PZ

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were 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 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: 20 January 2023

By Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land at: St Martha's Prior, Halfpenny Lane, Chilworth, Guildford GU4 8PZ

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Scale: NTS

