



Appeal Decision

Site visit made on 8 February 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/P5870/X/21/3289515

46 Sandy Lane, Cheam SM2 7PQ

- 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 Hemmings against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/02048, dated 12 October 2021, was refused by notice dated 29 November 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 a single storey detached outhouse at the rear of the garden, which will be ancillary in use.
-

Decision

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

Main Issue

2. The main issue is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

3. Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides general planning permission for a building required for a purpose incidental to the enjoyment of a dwellinghouse, subject to limitations.
4. The officer report is clear that the appeal proposal meets all Class E requirements bar the one that I will address below, and I have seen or read nothing to cause me to conclude otherwise against the agreement of the parties on those matters of common ground.
5. The Council refused the LDC because it considers that the proposal falls foul of limitation E.1.(c) in that it argues part of the building would be situated on land forward of a wall forming the *principal elevation* of the original dwellinghouse.
6. There is a dispute between the parties as to what constitutes the principal elevation. While the term is not defined in the GPDO, the *Technical Guidance*¹ (TG) offers assistance as to how that term should be understood.

¹ Permitted development rights for householders - Technical Guidance (September 2019); Ministry of Housing, Communities and Local Government

7. The TG states that, in most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned).
8. While the appeal property is situated on a corner plot at the junction of Sandy Lane and South Drive, it is the former rather than the latter highway that sets the postcode for the appeal property. Therefore, the main highway in the case before me is Sandy Lane. It is the eastern elevation of the property, served by the property driveway and vehicular access, which fronts onto Sandy Lane and which it seems to me would be regarded by most observers as the front of the Sandy Lane address.
9. I acknowledge that the main entrance to the house is situated upon the southern elevation, accessed by a path leading down from the higher ground level of South Drive, but I find for the aforementioned reasons that this merely represents access achieved through the side elevation of the property.
10. Accordingly I have taken a reasoned view, as deemed necessary by the TG where there are two elevations which may have the character of a principal elevation on a corner plot. I note that the Council appears to have come to the same view in previous assessments of the property², notwithstanding the position taken in refusing the LDC.
11. On the basis of my finding, no part of the proposed outbuilding would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse, and I conclude that the development meets the requirements of Class E in all respects.

Conclusion

12. 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 a single storey detached outhouse at the rear of the garden, which will be ancillary in use, 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.

Andrew Walker

INSPECTOR

² Pages 9 and 10 of the Appellant's Statement of Case

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 12 October 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

General planning permission is afforded to the development by virtue of Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

Andrew Walker

Inspector

Date 10 February 2023

Reference: APP/P5870/X/21/3289515

First Schedule

Single storey detached outhouse at the rear of the garden, which will be ancillary in use

Second Schedule

Land at 46 Sandy Lane, Cheam SM2 7PQ

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: 10 February 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: 46 Sandy Lane, Cheam SM2 7PQ

Reference: APP/P5870/X/21/3289515

Scale: Do not scale

