



Appeal Decision

Site visit made on 28 March 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 April 2023

Appeal Ref: APP/D5120/X/21/3288110

The Shed, 57 North Cray, Road, Sidcup DA14 5EU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr B Stuart against the Council of the London Borough of Bexley.
 - The application Ref. 21/01644/LDCE is dated 18 May 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'use of land identified for residential purposes'.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr B Stuart against the Council for the London Borough of Bexley. This application is the subject of a separate Decision.

Reasons

3. The Shed, the home of the Appellant since 2000, is a single storey building for which LDC 07/01650/LDCE was granted for 'continued use of The Shed as a single dwelling house'. The 2007 LDC did not establish the lawfulness of any use of land associated with the residential use of The Shed. The LDC application that is the subject of this appeal sought to establish that the land identified on a plan submitted with the application is land used for residential purposes associated with the residential occupation of The Shed. To be successful the Appellant must provide sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been in use for residential purposes for a period in excess of ten years prior to the date of the application.
4. The land is roughly rectangular and about 0.45 hectares and is in the Appellant's ownership. The Shed and an outbuilding and a garage are close to the north-west corner of the land. A driveway leads from a gate in the north-east boundary of the land across the land to the group of buildings. A series of aerial photographs taken during the ten year period consistently show, as is the case now, that development is concentrated at the north end of the land. Around the dwelling there will have been, throughout the ten year period, outdoor residential

activity normally associated with occupation of a dwelling, including activity along the driveway. There is no reason not to grant an LDC for this part of the land.

5. To the south-east of the dwelling ground levels rise and the land is rough grassland. Along the north-east boundary there is now a cultivated border and at the south-east end of the land, at its highest point, there is outdoor seating. But the border and seating do not appear in any of the five aerial photographs taken during the relevant ten year period. These photographs show the majority of the land to be vacant and only in aerial photographs of 2015, 2018 and 2019 is the grassland shown to have been mown. The rough grassland is not subdivided from the land around the dwelling, it is in the same ownership, and the whole of the 0.45 hectares may be regarded to be a single planning unit. But these factors are not, in themselves, conclusive on the use of the land.

6. The Appellant has submitted a signed, dated and authorised statutory declaration in which he states "...I have only ever used the land...for purposes connected with the residential use of the site". The Appellant's Agent has claimed, similarly, that "...the use of all of the identified land has been incidental to the use of the dwellinghouse...". But nowhere in the evidence is there any indication of what the area of rough grassland has been used for. There is no evidence of what activities have been carried out on the rough grassland or of what function or purpose it has served. If it is claimed that the land has been used for residential purposes then, at the very least and in the absence of any evidence, the Appellant must be expected to indicate what those purposes have been.

7. Mowing of the area of rough grassland has been carried out but this is not in itself a residential purpose. There is insufficient precise and unambiguous evidence to justify a conclusion that the whole of the Appellant's property has been in use for residential purposes for the ten year period prior to the date of the application. During this period the rough grassland to the south-east of the dwelling has been vacant without any apparent use or purpose. There is insufficient evidence to justify granting an LDC for this part of the land.

8. Section 193(4)(a) of the Act states that an LDC "...may be issued for the whole or part of the land specified in the application". An LDC can be granted for the part of the land specified in the application that is around the dwelling at the north-west end of the land, for the reason given in paragraph 4 above, but cannot be granted, for the reason stated above, for the remainder of the land.

9. For the reasons given, and on the evidence now available, if the Council had refused the application their refusal to grant an LDC for the 'use of land for residential purposes' at The Shed, 57 North Cray Road, Sidcup would not have been well founded in relation to the part of the land around the dwelling but would have been well founded in relation to the remainder of the land. The appeal therefore succeeds in part and is refused in part, and an LDC is granted for the 'use of land for residential purposes' at The Shed, 57 North Cray Road, Sidcup; the land being identified on the plan attached to this decision.

John Braithwaite

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 18 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The land has been used for residential purposes for in excess of ten years and is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 06 April 2023

Reference: APP/D5120/X/21/3288110

First Schedule

Use of land for residential purposes

Second Schedule

Land at The Shed, 57 North Cray Road, Sidcup DA14 5EU

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 06 April 2023

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Scale: not to scale

