
Appeal Decision

Site visit made on 30 May 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/A2280/X/22/3308789

66 Sharfleet Drive, Strood ME2 2TY

- 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 Johan Pieterse against the decision of The Medway Council.
 - The application Ref MC/22/1874, dated 1 August 2022, was refused by notice dated 27 September 2022.
 - The application was made under section 191(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 described as a "Garden room incidental to the enjoyment of the dwellinghouse."
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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 proposed operation which is found to be lawful.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development, at the date of application, was lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the garden room is granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

4. The appeal site relates to a semi-detached two-storey dwellinghouse. The garden room, the subject of this appeal, is single storey L-shaped outbuilding with a flat roof. Class E of Schedule 2 Part 1 of the GPDO gives planning

permission for (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject also to the size, height, and locational limitations at paragraphs E.1 to E.3. The Council determined that the existing garden room falls foul of Paragraph E.1 (h), of the GPDO which restricts the construction or provision of a verandah, balcony or raised platform.

5. The Council Officer's Report states that the development comprises a raised platform at a height of 0.45m. The appellant argues that the surface of the ground on which the decking is situated, is not uniform, and that no part of the decking exceeds 0.3m in height when measured from the highest part of the surface of the ground adjacent to it.
6. During the site visit I also observed that the ground level was not uniform with land sloping down away from the main house. Indeed, the parties agreed that the height of the decking was around 0.15m closest to the main dwelling, around 0.29m adjacent to the part of the outbuilding closest to the main dwelling and around 0.42m adjacent to the rear part of the outbuilding labelled 'Garden Room' on plan PA/22/066/001 .
7. The GPDO Article 2 (1), states that a "building" includes any structure or erection including part of a building, but it does not include plant or machinery or any gate, fence, wall, or other means of enclosure. The decking clearly amounts to a structure or erection; it is not an item of plant or machinery nor a means of enclosure. There is nothing in the GPDO to suggest that decking should be regarded other than as a building.
8. The Government's Technical Guidance (TG)¹ explains the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Under the relevant section on Class E, The TG states that a raised platform is defined as any platform that has a height of more than 0.3m. Garden decking will therefore be permitted development under Class E subject to it not exceeding this 0.3m height limit.
9. The GPDO Article 2(2) states that unless the context requires otherwise, the height of a building refers to its height as measured from "ground level", this being the level of the surface of the ground immediately adjacent to the building in question or where the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. Article 2 (2) does not provide any indication that the height of decking should be measured differently to other buildings.
10. No part of the decking exceeds 0.3m in height when measured from the highest part of the surface of the ground adjacent to it, this being the point at which to measure the height of the decking in line with Article 2 (2) above. Therefore, the decking does not amount to a raised platform in excess of 0.3m and it does not fall foul of the limitation at paragraph E.1(h) of Class E.
11. The Council have raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class E of the GPDO, and from my reading of the drawings, I find no reason to disagree with these findings.

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

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 the "Garden room incidental to the enjoyment of the dwellinghouse" was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

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 1 August 2022 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

R. Satheesan

Inspector

Date: 06 June 2023

Reference: APP/A2280/X/22/3308789

First Schedule

Garden room incidental to the enjoyment of the dwellinghouse

Second Schedule

Land at 66 Sharfleet Drive, Strood ME2 2TY

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 June 2023

by **R Satheesan BSc PGCert MSc MSc MRTPI**

Land at: 66 Sharfleet Drive, Strood ME2 2TY

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Scale: Not to scale

