
Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/E5330/X/22/3305023
50 Kidbrooke Grove, London SE3 0LG

- 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 Ian Robson against the decision of Royal Borough of Greenwich Council.
- The application Ref 22/1146/CP, dated 2 April 2022, was refused by notice dated 30 May 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
- The development for which a certificate of lawful use or development is sought is the installation of a new garden office at the bottom of the garden, next to an existing brick shed outbuilding. It is further described as involving all access through the main house.

Summary Decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. Although the Council's decision notice purports to certify that the proposed development 'would not have been lawful', contrary to the requirements of the 1990 Act which merely require that the application be refused where that is the local planning authority's view, I nonetheless take the decision notice to be a notice of refusal.
2. It appeared to me that, as it concerns development not yet started on the relevant date (being the date of the application), the appeal was capable of determination on the papers. Neither party disagreed and accordingly I have not conducted a site observation.

Main Issue

3. The main issue in the case is whether the Council's decision to refuse to issue a certificate was well-founded.

Reasons

4. The application concerns the proposed erection of a garden office building, which may amount to development permitted by article 3 of, and Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). I do not understand the Council to dispute that the proposed development would fall within the description of development permitted by Class E of that Part; which is to say that the development would consist of the provision of a building required for a

purpose incidental to the enjoyment of the dwellinghouse as such. I should state, for the avoidance of doubt, that although described as an 'office' I do not understand the appellant to be seeking any development other than in accordance with the dwellinghouse's existing use class.

5. Rather, the dispute between the parties arises out of the plans submitted with the application, and whether or not these show a building that would accord with the height restrictions of development permitted by that Class.
6. The application form, in explaining why a certificate should be issued, stated that the new outbuilding would not exceed 2.5m in height; it would be within 2m of the property's boundary; and together with the existing outbuilding would not exceed more than 50% of the curtilage to the (original) house.
7. It is fair to say that the accompanying plans to the application have not been professionally drawn; and the Council point out a number of discrepancies which led them to conclude that they could not be satisfied that the development proposed would fall within the limitations of the 2015 Order.
8. Section 193 of the Act provides that any application for a certificate shall be made in such a manner, include such particulars, and be verified by such evidence, as may be prescribed by a development order. The relevant applicable development order is the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the DMPO'). Article 39 of the DMPO sets out the relevant requirements.
9. That article in turn sets out that any application for a certificate must be made on a form published by the Secretary of State, or on a form substantially to the same effect. The Government's Planning Practice Guidance advises¹ that such forms can be obtained from local planning authorities, as was the case here. Whilst article 39 itself requires the proposed operations merely to be 'described', the (standard) form issued by the Council here was specific in requiring, at the section entitled 'Description of Proposal', a "detailed description of all... operations... and indicate on your plans (in the case of a proposed building the plan should indicate the precise siting and exact dimensions)".
10. Here, like the Council, I have been unable to reconcile many of the building's proposed (annotated) dimensions with the 1:50 scale given. Scaling the drawings and rounding to 10cm, drawing KG1 shows the roof dimensions of 2.4m x 3.7m. KG2 shows floor dimensions of 2.3m x 3.6m. This could potentially be explained by a roof overhang; however, floor dimensions of 2.4m are then shown on drawings KG5 and KG6. KG3 shows a height of 2.4m and a width of 3.6m. However KG4 shows a height of 2.7m, although apparently 0.4m higher than the existing shed, unlike KG3 and KG6 where the difference is 0.2m and KG5 where the difference is 0.1m.
11. The onus of proving, on any application for a certificate of lawfulness, that the proposed development would in fact be lawful lies on the applicant, to the standard of probability. The information given by an applicant in support should be sufficient to verify the matters claimed to be lawful, and should also be sufficiently precise and unambiguous.

¹ Paragraph: 005 Reference ID: 17c-005-20140306; Revision date: 06 03 2014

12. Here, there is some ambiguity in the application drawings, with some inconsistencies between each of the drawings and also within each drawing where the annotated measurements do not quite match the results achieved by applying the given scale.
13. Nevertheless, the only drawing where the height is clearly shown to exceed the permitted development tolerance is KG4. The other drawings are all consistent with each other (and internally) to a tolerance of around 10cm. The appellant, seeking merely to build a domestic outbuilding incidental to the enjoyment of his house, is not professionally represented, and the plans are hand-drawn. To the extent that there are inconsistencies, I prefer the reasoning as to the proposed lawfulness set out in the application form; namely that the proposed building will not exceed 2.5m in height. If a building is built that is more than 2.5m in height, it would not be permitted development.
14. Taking the matter in the round, the balance of the information put forward by the appellant depicts and describes a proposed domestic outbuilding that will not exceed 2.5m in height. There are some inconsistencies in the documents before me but, with the exception of drawing KG4, I find these to be within tolerable limits. I am therefore prepared to issue the certificate sought, but in terms that explain that I am satisfied that the building will not exceed 2.5m in height. I shall expand the description of the proposed development to incorporate the matters described by the appellant in the application when explaining why he considered the proposed building to be lawful (as referred to in paragraph 6 above). Therefore if, when built, the building does exceed that height, it would not be justified by, or referable to, the certificate I am granting. I shall refer to the application plans but shall omit any reference to drawing number KG4.

Conclusion

15. 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 proposed garden office at 50 Kidbrooke Grove SE3 0LG 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.

Formal Decision

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

Laura Renaudon

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 2 April 2022 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 operations would have been permitted by article 3 of and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, constituting the provision of a building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Signed

Laura Renaudon

Inspector

Date 6 October 2023

Reference: APP/E5330/X/22/3305023

First Schedule

The installation of a new garden office at the bottom of the garden, next to an existing brick shed outbuilding, which would be constructed in accordance with application drawing numbers KG1, KG2, KG3, KG5 and KG6 and would not exceed 2.5m in height; would be within 2m of the property's boundary; and together with the existing outbuilding would not exceed more than 50% of the curtilage to the original house. All access would be taken through the house.

Second Schedule

Land at 50 Kidbrooke Grove, London SE3 0LG

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: 6 October 2023

by **Laura Renaudon LLM LARTPI Solicitor**

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Scale: do not scale

