
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/22/3309627
167 Humber Road, London SE3 7EG

- 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 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 Robert Graham against Royal Borough of Greenwich Council.
- The application (Ref.22/1871/CP) is dated 6 June 2022.
- 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 preparatory works consisting of minor ground works in levelling out part of the land, the laying of a steel mesh reinforced concrete slab 3m x 5m and 75mm thick, the digging of a French drain around the slab, and the construction of a 5x3 metre Shed, 2x4" stud construction, dual pitched roof covered in slate, walls clad in English Oak feather edge.

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. As the proposal concerns development not yet started on the date of the application (being the relevant date for consideration) it appeared to me that the appeal was capable of being determined on the papers. Upon consulting the parties and receiving no dissent I have proceeded accordingly, without a site observation.

Main Issue

2. The Council did not reach a determination on the application, and have suggested no reasons why a certificate should not be issued. The appellant contends that the proposed development is lawful because it benefits from a permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). The specific permission said to be conferred is that by article 3 of, and Class E of Part 1 of Schedule 2 to, the 2015 Order. Therefore the issue arising in the appeal is whether the proposed development benefits from that permission, having regard to the nature of the permission and any relevant limitations or restrictions that apply to it.

Reasons

3. Part 1 of Schedule 2 applies to development within the curtilage of a dwellinghouse. That much is evident from the property's address and the Proposed Site Plan drawing no. 001 Rev A.

4. The permission conferred by Class E is that for the provision within the curtilage of the dwellinghouse of (among other structures) any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Although the application does not expressly describe the intended purpose of the proposed building, it is evident from the drawings supplied that it is a garden shed. There is no reason to doubt that it falls within the general description of what is permitted by Class E.
5. Referring to article 3 of the 2015 Order, I am not informed of any planning conditions, Article 4 Directions, or any other matters arising that might prevent the particular Class E permitted development rights from applying here.
6. Having regard to the prohibitions and restrictions of Class E, found in paragraphs E.1, E.2 and E.3 of the 2015 Order, none appear relevant to the proposal. The proposed shed would be situated to the rear of the dwellinghouse; would consist of one storey; and would be 2.5m at its maximum height, as depicted in drawing number 002. It would not occupy an excessive amount of the curtilage, as depicted in drawings 001 REV A and 003.
7. The preparatory works as described in the application all appear to me reasonably necessary and incidental to the provision of the shed itself, and hence the works as a whole benefit from the permission conferred by the 2015 Order. The information supplied by the appellant has not been disputed by the Council and it is sufficient to demonstrate, on the balance of probabilities, that the proposed works benefit from planning permission. Hence a certificate will be issued.

Conclusion

8. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of preparatory works and the construction of a garden shed at 167 Humber Road 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

9. 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 6 June 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, 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, consisting of the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Signed

Laura Renaudon
Inspector

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First Schedule

Minor ground works in levelling out shaded area as indicated on the proposed site plan; laying of a steel mesh reinforced concrete slab 3m by 5m and 75mm thick; the digging of a French drain around the slab; and erection of a 5m x 3m Shed, 2x4" stud construction, dual pitched roof covered in slate, and walls clad in English Oak feather edge, in accordance with application plans TQRQN22143190913063 (site plan); drawing 001 REV A (proposed site plan); drawing 002 (proposed elevations; and drawing 003 (shed floor plan).

Second Schedule

Land at 167 Humber Road, London SE3 7EG.

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

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Scale: do not scale

