



Appeal Decision

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/M3645/X/23/3335014

Red Cottage, 1 Clay Lane, South Nutfield, Redhill, Surrey, RH1 4EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) 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 Miss Esther Hartmann against Tandridge District Council.
 - The application ref 2023/880 is dated 16 August 2023.
 - 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 use of the existing wooden cabin for use 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 existing operation which is found to be lawful.

Preliminary Matters

2. The case was determined without undertaking a site visit as the facts regarding the development and relevant time periods were agreed by the parties.

Main Issue

3. The main issue is whether had the Council refused to grant a certificate of lawful use or development in respect of the development that refusal would have been well-founded. It does not appear from the evidence submitted that any enforcement notice is in force for the land, and the key question is therefore whether enforcement action may be taken in respect of the uses and operations described in the application.
4. The appellant is seeking an LDC for the use of the existing wooden cabin incidental to the enjoyment of the dwellinghouse. There is no dispute that the cabin was substantially complete by the early part of 2017 (April 2017 at the latest). The operational development is therefore immune from enforcement action because the time for enforcement action has expired pursuant to section 171B(1) (4 years).
5. The Council do not accept that the appellant has proven that the use has been wholly incidental to the enjoyment of the dwellinghouse and that it would therefore fall within the development permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO').

6. However, as the building is immune from enforcement action, and it is located in the garden of the dwellinghouse which has a residential use, the cabin can be used as part of that residential use. If it were to be used for a different purpose, including as a separate residential unit, this could be a material change of use which would require its own planning permission.
7. The appellant seeks confirmation that the existing wooden cabin is being used for a purpose incidental to the enjoyment of the house but this element of incidental use (as referred to in the GPDO) is not required as the building is immune from enforcement action. The Council accepts that the LDC should be granted in relation to the operational development, and I agree that the appeal succeeds in relation to the building. The description of development should therefore be modified so that the LDC granted applies to the operation development which constitutes the existing wooden cabin.

Conclusion

8. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the existing wooden cabin that refusal would not have been 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).

Zoë Franks

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 16 August 2023 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The wooden cabin was substantially completed more than 4 years before 25 April 2024 and the date of the LDC application and was therefore immune from enforcement action.

Signed

Zoë Franks

Inspector

Date: **[11 November 2024]**

Reference: APP/M3645/X/23/3335014

First Schedule

Existing wooded cabin building.

Second Schedule

Land at Red Cottage, 1 Clay Lane, South Nutfield, Redhill, RH1 4EG

IMPORTANT NOTES – SEE OVER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 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: **[11 November 2024]**

by Zoë Franks

Land at: Red Cottage, 1 Clay Lane, Redhill, RH1 4EG

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Scale: Not to Scale

