



Appeal Decision

Site visit made on 4 February 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2025

Appeal Ref: APP/V1260/X/24/3339454

79 Fernside Road, Poole BH15 2JQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alex Whitehead against the decision of Bournemouth, Christchurch and Poole Council.
 - The application ref APP/23/01025/K, dated 6 September 2023, was refused by notice dated 9 November 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is described in the appeal form as a ready-built timber garden shed.
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Decision

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

Preliminary Matter

2. A shed and a concrete base have been constructed in the rear garden of the site since the date of the application. As the application was submitted for the proposed erection of a shed under section 192(1)(b) of the Act I have considered the lawfulness of the proposal (which makes no reference to a concrete base) on the date of the application. My decision is therefore based on the plans and information provided with regard to the proposed development, rather than the shed and concrete base which have been constructed. I make no assessment as to whether the shed and concrete base have been erected in accordance with the proposed plans as that is not the subject of the appeal.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposed shed would have been 'permitted development' under the provisions of Article 3(1) and Class E of Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) on the date of the application.

Reasons

4. It is not disputed that the proposed shed would fall within the description of development specified by Class E of Part 1, Schedule 2 of the GPDO. Nor is it disputed that the proposed shed would accord with the limitations set out in paragraphs E.1(a) to (d), (g), (i) to (k), E.2, or E.3. I see no reasons to find

otherwise. It is also not disputed that the proposed shed would be erected within 2 metres (m) of the boundary of the curtilage of the dwellinghouse.

5. The proposed shed was shown to be erected at the rear end of the garden, where what has been referred to as 'a raised platform' laid with brick paviours has been constructed behind a low-level retaining wall. The appellant claims this was constructed over 25 years ago, which is consistent with the visual appearance and condition of the retaining wall. I noted that adjacent land levels at the ends of the neighbouring rear gardens to 77 and 81 Fernside Road were broadly consistent with that of the top of the brick paviours. It therefore appears that land levels slope upwards to the rear of gardens on this part of Fernside Road.
6. When identifying the height of the proposal, it is appropriate to measure that height from the ground level immediately adjacent. The Technical Guidance¹ explains that the ground level 'would not include any addition laid on top of the ground such as decking'. Although I have seen brick paviours on top of what has been referred to as a raised platform, I am satisfied that this is the relevant ground level to measure the height of the proposed shed from. This is on account of the low profile of those paviours, the consistency with neighbouring land levels, and the undisputed claim that the raised platform has been in place for over 25 years.
7. Although the evidence is limited, and the plans do not show any changes in land levels within the site, there is nothing which leads me to doubt the appellant's claims that no part of the proposed shed would exceed 2.5m in height, as shown in the proposed elevation plans. To clarify, the appellant has not sought an LDC for the raised platform or the concrete base which has subsequently been constructed on the raised platform. The proposal does not therefore fail to accord with limitations E.1(e)(ii), (f) or (h) of Class E.
8. The appellant's evidence is basic, but the proposed plans and supporting information are sufficiently precise and unambiguous to show, as a matter of fact and degree, that the proposed shed would accord with the limitations set out in paragraph E.1 of Class E. The proposal therefore benefitted from the planning permission granted by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO on the date of the application.

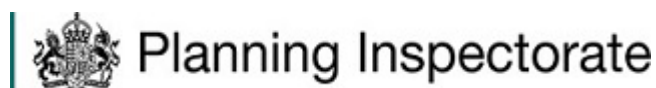
Conclusion

9. For the reasons given above, I conclude that the Council's refusal to grant an LDC for a ready-built timber garden shed was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the Act.

L Douglas

INSPECTOR

¹ Permitted development rights for householders (September 2019)



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 September 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, 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 proposed shed, as shown on Drawing Nos. 0001-01 Revision B, 0001-02 Revision B, and 0001-03 Revision B submitted as part of the application would accord with the description of development and limitations set out at Class E of Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). As such, it benefited from the planning permission granted by Article 3(1) of the GPDO on 6 September 2023.

Signed

L Douglas

Inspector

Date: **17th February 2025**

Reference: APP/V1260/X/24/3339454

First Schedule

A ready-built timber garden shed

Second Schedule

Land at 79 Fernside Road, Poole BH15 2JQ

IMPORTANT NOTES – SEE OVER

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: 17th February 2025

by L Douglas

Land at: 79 Fernside Road, Poole BH15 2JQ

Reference: APP/V1260/X/24/3339454

Scale: Not to Scale

