



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal Ref: APP/P3040/X/24/3351582

4 Castle Hill, East Leake, Loughborough LE12 6LX

- 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 Richard Reynolds against the decision of Rushcliffe Borough Council.
 - The application ref 24/00991/CLUPRD, dated 5 June 2024, was refused by notice dated 7 August 2024.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which an LDC is sought is described as: There are currently 2 garden sheds in the garden. Shed 1 - 2.6m x 2.0m, Shed 2 - 2.0m x 1.8m. The proposal is to dismantle both sheds and replace with a wooden summer house measuring 22" x 10", positioned 1m away from the boundary line. The new wooden structure has a height of less than 2.5m. The position of the wooden structure will sit on the same position as the existing sheds, 1m away from the southern boundary, 17.2m away from the east boundary. No other changes are required around access, hard standing or drainage requirements.
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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 Matters

2. The description of the proposed development set out above is taken from the application form. While the Council gave a shorter alternative description, which I use in the LDC attached to this decision, it is evident that its reason for refusing to issue an LDC was limited to the erection of the summer house.
3. The submitted drawings confirm that the stated dimensions of the proposed summer house in the description above are incorrect and should be 22' x 10' (i.e. 6.71m x 3.05m). I shall determine the appeal on that understanding.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on whether the erection of the summer house shown in the submitted drawings would have been lawful if begun on the date of the application.

Reasons

5. Article 3 and Schedule 2, Part 1, Class E ("Class E") of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order") permit the provision of any building required for a purpose incidental to the enjoyment of a dwellinghouse within the curtilage of that dwellinghouse. This is subject to various limitations set out in paragraphs E.1, E.2 and E.3.

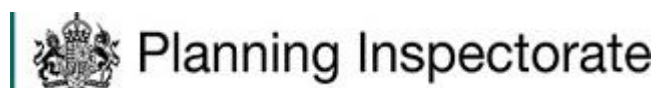
6. The only limitation cited as a justification for the Council's refusal to issue an LDC is in paragraph E.3, which applies because the site lies within the East Leake Conservation Area. The effect of this limitation is that Class E does not permit the erection of the summer house if any part of it would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.
7. The meaning of this limitation is clear: for it to apply, the building in question must not just be closer to the boundary than the dwellinghouse. It must also, in whole or in part, be *between* the side wall of the dwellinghouse and the boundary. The proposed summer house would be sited further into the plot, away from Castle Hill, than any part of the wall forming the side elevation of the dwellinghouse. Consequently, it would not be situated on land between that wall and the boundary, so the limitation made by paragraph E.3 does not apply and the erection of the summer house is permitted by Class E.

Conclusion

8. For the reasons given above, I conclude that the Council's refusal to grant an LDC for the erection of a summer house is 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.

Mark Harbottle

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 5 June 2024 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 erection of the summer house shown on drawing ref 'REYNOLDS' in the position marked in red on drawing 'Revised Site Plan' ref TQRQM24207164250849 is permitted by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Mark Harbottle

Inspector

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First Schedule

Erection of a summer house

Second Schedule

Land at 4 Castle Hill, East Leake, Loughborough LE12 6LX

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 this decision dated: 12 May 2025

by Mark Harbottle

Land at: 4 Castle Hill, East Leake, Loughborough LE12 6LX

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Scale: Not to Scale

