



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2025

Appeal Ref: APP/K0235/X/24/3336647

67 Haynes Road, Bedford MK42 9PG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tom Watts against the decision of Bedford Borough Council.
 - The application ref 23/01460/LDE, dated 13 July 2023, was refused by notice dated 5 September 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is garage conversion.
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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 use which is found to be lawful.

Preliminary Matters

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application, and the parties have submitted sufficient evidence to understand the nature of the site given the dispute.
3. The description in the banner heading is taken from the original application form. However, based on the submissions it is evident that the appellant is seeking to demonstrate that the garage has been used as an additional family room to the dwellinghouse, as a gym room and family/childrens playroom.

Background and Statutory Framework

4. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. The appeal property was erected pursuant to planning permission 99/00258/OUT. Condition 19 of that permission states: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any amendment thereto, the garage accommodation on the site shall not be used for any purpose, other than as garage accommodation, unless permission has been granted by the Local Planning Authority on an application made for that purpose.*
6. *REASON: To retain off-street parking provision and thereby minimise the potential for on-street parking which could adversely affect the convenience of road users.*

7. The application was made under section 191(a) of the Act. However, the appellant clearly sought to establish that the garage has been used for purposes other than as a garage, which would be a breach of condition 19. The development therefore relates to section 191(c) of the Act - any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted.
8. The use of an attached garage as part of the dwellinghouse accommodation would not usually constitute a material change of use and therefore would not constitute development – as the Inspector in the Enfield case, referred to by the appellant determined. However, in this case there is a condition on the planning permission which prevents the use of the garage for purposes other than garage accommodation. The relevant period in respect of a breach of condition is 10 years.
9. For the appeal to succeed, the appellant would need to demonstrate that the garage has not been used and was not available for use as garage accommodation, in breach of condition 19, on a substantially uninterrupted basis for not less than ten years (section 171B(3) of the Act) prior to the date of the application. The test to be applied is whether at any point during the alleged period of the breach the Council could have taken enforcement action.
10. The proposed works, being the insertion of the door and window, cannot form the subject of an application made under section 191 and those works have not formed part of my assessment.
11. The planning merits of the development are not relevant to this appeal, my decision rests on the facts of the case. As such, planning policies, including whether the development represents sustainable development are not relevant and that there is no impact on parking requirements, nor negative effects on residential amenity are matters which have no bearing on this appeal.
12. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

Main Issue

13. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

14. For the appeal to succeed, the appellant would need to demonstrate that the garage has been *used* [my emphasis] for purposes other than as a garage for a continuous period of ten years. It is not sufficient that the garage has not been used for housing a car or vehicle if it was still available for that use.

The appellant's evidence

15. The appellant's evidence consists of statutory declarations all dated 20 June 2023, two images of the inside of the garage, existing and proposed floor plans, sales details/brochure, invoices and building control site inspection details, an invoice from BG Builders for a new radiator and an email from the same builders setting out works carried out to the garage.
16. In the statutory declarations of Thomas Martin Watts (the appellant) and Nikita Clair Watts, it is stated that since moving into the property on 28 June 2013 the garage

has been used as an additional room to the property, not as a garage. Further, that the room has been furnished but the garage door is still in place.

17. Lucy Victoria Hunt (occupant of 65 Haynes Road) stated in her statutory declaration that she has known Nikita and Thomas Watts since they became her neighbour on 28 June 2013 and the garage has never been used as a garage since they purchased the property and has been used as an additional room. The declaration of Linda Jayne Hall is not helpful since she has only known the appellant since 2018. Nevertheless, she does state that she *believes* [my emphasis] the garage has been used as an additional room to the property and not as a garage.
18. The screenshot of the Facebook post, dated 30 August 2015, appears to show the garage in use as a modest home gym. In the image the floor appears to be tiled and there is skirting boards and coving. The other image, purports to show the current condition, with some of the same gym equipment visible, along with the tiled floor and skirting board. It seems likely this is taken at a different time, given the addition of astroturf over the door opening and as there is a picture on the wall where there was previously a dartboard, although it is undated.
19. The floor plans in the sales brochure from 2013, show the garage as a store and utility. Albeit this is not an entirely accurate plan since it shows a single door to the front and not the garage door.
20. The building control inspection details are dated 19 February 2013 and 15 March 2013, which are prior to the appellant's occupation and the material date (13 July 2013). In any event, these would not support the appellant's case, given that it is noted in the first inspection that the 'owner has opted to remove the stud wall to revert the room back to a garage/store remove radiator.'
21. In the later inspection it is noted that the stud wall had been removed, and the garage space reverted to storage/garage use with utility room.
22. The existing floor plans take me no further since they label the room as existing garage and storage. Nor does the invoice from BG Builders since it only relates to a new radiator and is dated 15 July 2017. Similarly, the email from the builders, referred to as an invoice at Figure 5 of the submissions, lists work carried out to the room, but does not state when the works were carried out and is dated 27 November 2023. These are therefore of limited weight.
23. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
24. Whilst I acknowledge that the appellant should have been aware of the condition restricting the use of the garage, that is not always the reality. The sales particulars indicate that the garage was not used as a garage when the appellant purchased the property, and since in my view, it is not unusual for attached garages to be used for purposes other than housing a car or vehicle, it seems likely that the appellant would have thought little of continuing the use for other purposes related to the use of the dwellinghouse. In such circumstances it is unsurprising that there is little photographic evidence of the actual use.

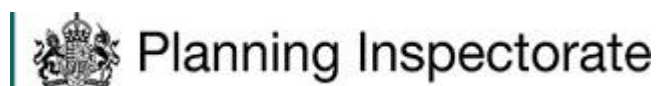
25. In their submissions it is stated that the appellant has used the garage as ancillary residential accommodation, as a gym room and family/childrens playroom for the last ten years. Whilst the statutory declarations from the appellant, his wife and neighbour do not specify how the garage has been used, other than as an additional room to the house, they are clear that it has not been used as a garage since they moved in. Those were properly made and therefore attract significant weight, particularly in the absence of contrary evidence.
26. Moreover, it seems highly unlikely that if it were not used as a garage that it would not have been used for some other purpose, related to the functioning of the dwellinghouse. This is reinforced by the internal finishes applied (skirting boards, coving and tiled floors) which are not typically found in garages used for housing vehicles, albeit there is no evidence that these were installed prior to 30 August 2015.
27. When viewed in totality, as a matter of fact and degree, the evidence presented indicates that on the balance of probabilities, the garage has been used as an additional room, part of the dwellinghouse accommodation and not as a garage in breach of condition 19 of permission reference 99/00258/OUT for a period in excess of ten years prior to the date of the application.
28. The description given by the appellant does not describe a use. Exercising powers under section 191(4) I shall modify the description to reflect that the garage has been used as an additional family room to the dwellinghouse, as a gym room and family/childrens playroom.
29. For certainty, condition 19 is not removed, the certificate only relates to the use of 67 Haynes Road, by the appellant or any person continuing the same use (breach of condition). The Council are not prevented from upholding the condition across the wider estate.

Conclusion

30. 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 for *the use of the garage as an additional family room to the dwellinghouse, as a gym room and family/childrens playroom* 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 1990 Act (as amended).

Felicity Thompson

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 13 July 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The garage has been used as an additional room, part of the dwellinghouse accommodation and not as a garage, in breach of condition 19 of permission reference 99/00258/OUT for a period in excess of ten years prior to the date of the application.

For certainty, condition 19 is not expunged, the certificate only relates to use of the garage at 67 Haynes Road, by the appellant or any person continuing the same use (breach of condition). The Council are not prevented from upholding the condition across the wider estate.

Signed

Felicity Thompson

Inspector

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Reference: APP/K0235/X/24/3336647

First Schedule

The use of the garage as an additional family room to the dwellinghouse, as a gym room and family/childrens playroom.

Second Schedule

Land at 67 Haynes Road, Bedford MK42 9PG

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 use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 31 July 2025

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Land at: 67 Haynes Road, Bedford MK42 9PG

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Scale: Not to Scale

