



Appeal Decision

Site visit made on 22 July 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2025

Appeal Ref: APP/E3335/X/23/3336155

Land at The Old Waterworks, Chipstable Road, Taunton, Somerset TA4 2PZ

- 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 T Morrow against the decision of Somerset Council.
 - The application ref 09/23/0008/LP, dated 17 July 2023, was refused by notice dated 6 September 2023.
 - 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 a garage and games room/office.
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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 proposed development which is found to be lawful.

Application for Costs

2. An application for costs was made by Mr T Morrow against Somerset Council. This application is the subject of a separate decision.

Main Issue and Main Considerations

3. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC is well founded. In this respect, the burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun on the date the application was made.
4. It is the appellant's case that the proposed development would be permitted by Class E of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), hereafter referred to as Class E. Class E permits buildings etc incidental to the enjoyment of a dwellinghouse. The main consideration in this appeal is whether or not the development proposed would have the benefit of the permission granted

by Class E if it had been instituted or begun on the date the LDC application was made.

5. Criteria (a) to (k) of E.1. specify the type of development that would not be permitted by Class E. The LDC decision notice refers to criteria (e) and (f) of E.1., and states that the proposal would not meet these criteria. I have, therefore, considered each of these criteria in this decision.
6. In reaching my decision in this case I have had regard to the MHCLG Technical Guidance on permitted development rights for householders. This includes advice on how to consider the criteria of the 2015 Order relevant in this case.

Reasons

The site and the proposal

7. The front boundary of the appeal site runs alongside the highway known as Hill Lane. There is a significant difference in the levels across the site; the levels increase substantially from the boundary with the highway to the ground to the rear of the site. In the location of the proposed building there has clearly been some recent excavation works. Whilst the ground level in this location is above the level of the adjoining highway, there is a substantial increase from this level to a walkway's width of land adjacent to the rear boundary of the site that is closest to the proposed building.
8. The dwellinghouse on the site has been extended and sits close to the boundary with the highway. The proposed building would sit alongside the dwellinghouse. It would have a staggered front elevation that would sit no further forward than the front elevation of the dwellinghouse. Its rear elevation would be angled, when compared to the front building line, following the boundary of the site to its rear.
9. The roof form of the proposed building would be varied; the northern section would be dual pitched with an off centre ridge. The section closest to the dwelling would have a more central ridge, but would feature a mansard roof detail with a dropped eaves on the slope and elevation facing the highway. The height of various elements of the proposed building have been shown on the drawing number 23/MOR/02 C, with further dimensions added to revision D of this plan.

Criterion (e) of E.1.

10. Criterion (e) of E.1. relates to the height of the building and informs that development would not be permitted by Class E if the height would exceed the measurements stated in sub-criteria (i) to (iii). There is no dispute that the measurement stated in sub-criteria (i) would apply in this case, which is 4 metres in the case of a building with a dual-pitched roof. The Council refer to the MHCLG Technical Guidance, where in its advice under criterion (e) of E.1. it states that the height of the building should be measured from the highest ground level immediately adjacent to the building to its highest point. The Council suggest that the highest ground level immediately adjacent to the building is that to the north, and it says that this measurement is some 4.8 metres.
11. The appellant does not dispute that, if the height of the building were to be measured as the Council have, this measurement would not be correct. However, he suggests that the land to the east of the building is the highest ground level immediately adjacent to the building. From here the plans referred to above give a

measurement of 2.549 metres from ground level to the highest point of the building.

12. The plans indicate that the building would be directly adjacent to this higher ground level. By this I mean that the plans do not show any gap between this higher ground level and the east facing elevation of the building. Furthermore, the Council does not suggest that the ground level in this location (i.e. along the walkway adjacent to the rear boundary, as I describe above) has been or would be artificially raised in order to achieve the above-mentioned height measurement. Indeed, at the site visit I inspected this part of the site and could not see any obvious increase in the ground level at this part of the site. The ground level of this walkway, which would be adjacent to the east facing elevation of the building, was slightly lower than the ground level in the adjoining field parcel, which is outside of the appeal site. On the whole, the level of this part of the site did not appear out of accord with what appeared to be the natural contours of the surrounding land.
13. Measuring the height of the proposed building in accordance with the MHCLG Technical Guidance, the plans indicate that it would not exceed 4 metres when measured from the highest ground level immediately adjacent to the east facing elevation of the proposed building. I have been given no reason to disregard the ground level that would be immediately adjacent to the east of the proposed building, when determining its height for the purposes of Class E. For this reason, the proposed development would not exceed the limitations set out in E.1. (e) of Class E.

Criterion (f) of E.1.

14. Criterion E.1. (f) informs that development would not be permitted by Class E if the height of the eaves of the building would exceed 2.5 metres. The Council says the eaves height would vary, ranging from just over 1 metre to in excess of 4 metres. I can see that these two dimensions are taken from the dimensions annotated on drawing number 23/MOR/02 D, where on the west facing elevation of the building, the plan indicates that the eaves height would be 2.5 metres from what is indicated on the plan as being the original ground level, but a further 1.506 metres from the ground level that would adjoin this part of the proposed building.
15. The MHCLG Technical Guidance advises that the eaves of a building will be the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building. Having regard to the roof formation and roof slopes of the proposed building shown on the plans, the lowest point of the roof slopes of the building would be on the east and west facing elevations; the plans show that the north and south facing elevations would be gable ends. Accordingly, I can agree with the appellant, that the eaves height measurement should be taken on the east and west facing elevations of the proposed building, not on the north and south facing elevations.
16. In view of the above, the maximum eaves height of the building measured on its east facing elevation would be that stated in the annotation on drawing number 23/MOR/02 D (i.e. 1.05 metres). Furthermore, having regard to the staggered front elevation, the plans indicate that the eaves height on the section of the west facing elevation that is set in from the front building line (i.e. the left hand section of

the west facing elevation) would not exceed 2.5 metres above ground level immediately adjacent to this part of the elevation.

17. As for the eaves height of the remaining west facing elevation (i.e. that on the right hand side), I can see that what appears to be the finished ground level across this elevation, as shown on the plans, would drop away substantially towards the southernmost part of the building, whereas the annotation of the original ground level shows a more gentle slope south. I acknowledge that the plans indicate that the maximum height of this elevation when measured from the finished ground level to eaves would exceed 4 metres. However, the plans indicate that the minimum height, ground level to eaves, would measure not more than 2.5 metres, regardless of whether that is measured from the finished or original ground level shown on the revision D plan.
18. I note that the MHGLC Technical Guidance advises that:

“Height” - references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. **Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.**) (my emphasis added).
19. When measuring the height of the eaves of a building, it would not be reasonable to have regard to the highest part of the surface of the ground next to a different elevation of the building, e.g. that next to the east facing elevation when measuring the eaves height of the west facing elevation. Nevertheless, when having regard to the highest part of the surface of the ground next to the right hand section of the west facing elevation, the plans show that the height of the eaves would not exceed the height specified in E.1.(e).

Summary

20. For the reasons given above, I conclude that the proposed building would not exceed the limits specified in E.1.(f) and (e) of Class E. I have been given no reason to find the proposal out of accord with any of the other conditions or limitations specified within Class E. Accordingly, the development proposed would have the benefit of the permission granted by Class E if it had been instituted or begun on the date the LDC application was made.
21. The LDC granted in this case is for the development proposed in the application. It would not apply to development that is materially different from the proposed scheme.

Conclusion

22. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for a garage and games room/office 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.

J Moss

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 17 July 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 works specified in the first schedule hereto would have been permitted by Class E of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

J Moss

INSPECTOR

Date: 11 August 2025

Reference: APP/E3335/X/23/3336155

First Schedule

A garage and games room/office.

Second Schedule

Land at The Old Waterworks, Chipstable Road, Taunton, Somerset TA4 2PZ

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 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, would not have been 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 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

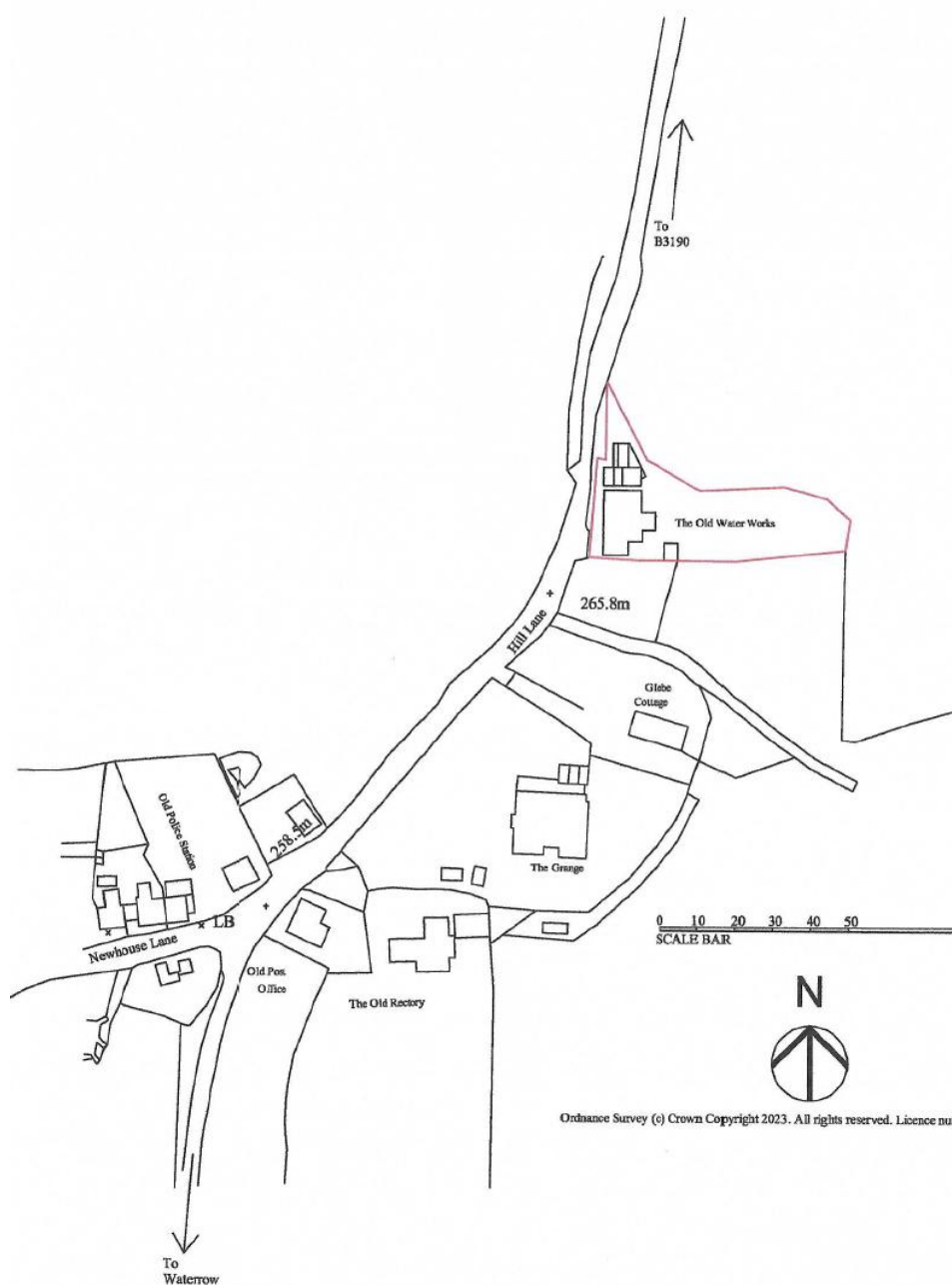
This is the plan referred to in the Lawful Development Certificate dated: 11 August 2025

by **J Moss BSc (Hons) DipTP MRTPI**

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Scale: Not to scale



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