



Appeal Decision

Site visit made on 26 November 2025

by Siobhan Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2025

Appeal Ref: APP/E5330/X/23/3326067

38 Humber Road, Blackheath, London, SE3 7LT

- 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 William Ponder against the decision of the Council of the Royal Borough of Greenwich.
 - The application ref 23/1359/CE, dated 24 April 2023, was refused by notice dated 19 June 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 “commencement of development within 3 years of approval under Council Ref: 14/3649/F”.
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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.

Applications for costs

2. The Council of the Royal Borough of Greenwich has made an application for costs against the appellant. This will be subject of a separate decision.

Preliminary Matters

3. The appellant is seeking a lawful development certificate (LDC) to confirm that development in accordance with planning permission 14/3639/F for “*construction of a part 1 part 2-storey rear extension, roof extension and loft conversion comprising 2 rear dormers and 2 front rooflights*” has been commenced and can be lawfully completed.

Main Issue

4. The main issue is whether the Council’s decision to refuse the LDC was well founded. This turns on whether development has commenced on planning permission 14/3639/F within 3 years of the date of approval.
5. The planning merits of the proposal are not relevant.

Reasons

6. Planning permission 14/3639/F at 38 Humber Road was granted on 11 February 2015. It was subject to a deemed condition requiring the development to commence within 3 years of the date of approval.

7. The appellant's case is that development commenced because, within the 3-year period following the grant of their permission, the adjoining neighbour at No 40 constructed a single storey extension and that the wall of that extension is a party wall to serve both approved extensions.
8. The Council's case is that the development was not started in time; that a pre commencement condition had not been discharged and the wall was not built in accordance with the appellant's plans. There is no dispute that the works constitute a material operation for the purpose of s56(2) of the Act.

Pre-commencement condition

9. If a development is in contravention of a 'condition precedent', it cannot properly be described as commencing in accordance with the planning permission. However, two matters apply for the condition to be a 'condition precedent'.
 - It must prohibit the commencement of development until a requirement has been met.
 - It must have such significance to the planning permission that it goes to the heart of the planning permission as a matter of judgment.
10. The condition in dispute prohibits the commencement of development before details of obscure glazing and window openings in the western flank elevation have been approved. However, this requirement does not go to the heart of the permission. These are details that could be provided before the windows are installed. There is no reason to have such a condition as a pre-commencement condition because the requirements only become relevant at the time of fitting the windows: not when building walls or digging foundations. The Planning Practice Guidance advises that the time of compliance with a pre-commencement condition should be so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. This is clearly not the case with the window details. Therefore, the condition is not a condition precedent and failure to comply with it does not mean that development has not commenced.

Whether the development commenced within 3 years

11. The development was required to have commenced by 11 February 2018. The appellant has provided an email trail with all emails dated 18 October 2017. These emails refer to the already constructed wall and contain a photograph of it in an unrendered state but at full height. This is sufficient to demonstrate that, on the balance of probabilities, development commenced in time.

Position of the wall

12. Various plans are before me to demonstrate the difference between what has been constructed and what was approved. Importantly, at my visit, I was able to compare the 2015 approved plans with what has been built. The approved wall, by the Council's figures, would be about 10cm from the boundary shown on the approved plans. In my estimation, the built wall roughly fills the area where this 10cm gap would have been and it slightly overlaps with the proposed position of the approved wall.
13. The discrepancy in the position of the wall is minimal and within normal tolerances, especially when looked at in the context of the entirety of the 2015 permission. The

fact that the two extensions would share a party wall instead of having a very tiny gap between them is minor.

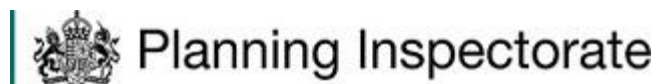
14. The Council say that the constructed wall is 3.8m deep whereas the approved wall is 3.6m deep. This is of no consequence because the appellant's extension does not need to use the full length of the completed wall to implement the planning permission.
15. For these reasons, I consider that the works carried out are comprised in the development for which planning permission was granted.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Siobhan Watson

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 24 April 2023 the operations 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:

Development lawfully commenced within the 3-year period imposed by S.91 of the Act because the party wall that has been built is consistent with permission 14/3649/F. The condition relating to the windows was not a condition precedent and the failure to discharge it before commencement does not invalidate the planning permission.

Signed

Siobhan Watson

Inspector

Date: 15 December 2025

Reference: APP/E5330/X/23/3326067

First Schedule

Development in accordance with planning permission 14/3639/F for "*construction of a part 1 part 2-storey rear extension, roof extension and loft conversion comprising 2 rear dormers and 2 front rooflights*" has been commenced and can be lawfully completed.

Second Schedule

Land at 38 Humber Road, London, SE3 7LT

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 December 2025

by Siobhan Watson

Land at: 38 Humber Road, London, SE3 7LT

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Scale: Not to Scale

