



Appeal Decision

Site visit made on 29 May 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2026

Appeal Ref: APP/L3815/X/24/3350962

35 Kelsey Avenue, Southbourne, Emsworth, Hampshire, PO10 8NG

- 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 Matt Merriman against the decision of Chichester District Council.
 - The application ref 24/01171/ELD, dated 24 May 2024, was refused by notice dated 21 August 2024.
 - 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 a detached outbuilding/garage in front of existing garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process, in December 2024, planning permission (ref SB/24/02508/DOM) was granted under s73 of the 1990 Act (as amended) for the retention of the outbuilding the subject of the current LDC appeal; although it is referred to in the decision notice as a garage extension. As such, the current appeal is superfluous as it has been overtaken by events. However, as the appeal has not been withdrawn I am still required to determine the submission.
3. In an appeal under s195 of the Act, pursuant on a s191 application being refused, the burden of proof is upon the appellant who will need to demonstrate that the development, as claimed is lawful in planning terms. The key is that the evidence should be precise and unambiguous.
4. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and, where relevant, case law.

Main Issue

5. The application was made under s191 of the Act, which relates to the lawfulness of existing development. This necessitates the applicant demonstrating, on the balance of probability, that the building at issue was immune from planning control due to the passage of time. Yet that does not appear to be the issue here, with the application form describing the development *'Existing garage in place. Detached outbuilding/garage to be proposed, in front of current garage.'*
6. It is unclear here what the exact nature of the development is and, moreover, whether a s191 application was the correct method to serve the owner's interests. I say this as the main issue to be explored in this appeal is whether, on the

balance of probability, the actual development was in place and substantially completed at least four years before the date of the application.

7. Accordingly, as the application is dated 24 May 2024, the material date is 24 May 2020. This will determine whether it was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

8. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

9. The Council's case report states, verbatim:

'A previous ELD (ref 24/00151/ELD) on 3 April 2024 on the basis that the proposed garage would be attached to the existing and therefore would exceed the limits set out within the above class E. The plans submitted with the current application show that the garage in this application is detached and therefore is/has been assessed as a separate outbuilding'.

10. The case report suggests that the proposal satisfies all the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO) yet concludes that the requested LDC could not be issued as it would not satisfy the provisos of Article 3(5) of the GPDO. The report, though, does not explain why exactly the provisos are not met, nor is the analysis consistent with a s191 application. Instead, the narrative is concerned with the considerations which need to be assessed for a s192 application, as it relates to development which is proposed, and not already in situ.

11. Further, the appellant's agent states, verbatim, in the appeal representations:

'The extension is not finished having stopped any further work once we were contacted by the council over a year ago so alterations can be done...'

12. In considering the material submitted from both parties I cannot be certain what precisely the development, the subject of the application made, was. Moreover, in the circumstances, I am not convinced that the a191 application was the correct vehicle for reasons given. In my view the material before me relating to the case as a whole is neither precise nor unambiguous. As such, the appeal is confusing.

13. Given my findings I am unable to issue the requested LDC but, as I have mentioned, that is now meaningless as the planning position has since been regularised with planning permission granted for the garage extension.

14. Accordingly, my decision, is now of no value to either of the main parties.

15. For the reasons given above I conclude that, on the evidence available, the Council's refusal to grant a certificate of lawfulness was correct, and the appeal should be dismissed. I shall therefore exercise the powers transferred to me under section 195(3) of the 1990 Act, as amended

TC King

INSPECTOR.