
Appeal Decision

Site visit made on 6 December 2016

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 December 2016

Appeal Ref: APP/N0410/X/16/3159068

The Lodge, Ashmead Drive, Denham, Uxbridge, UB9 5BA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms M Heath against the decision of South Bucks District Council.
 - The application Ref 16/00828/CLOPED, dated 21 April 2016, was refused by notice dated 20 June 2016.
 - 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 the erection of a detached building, comprising a double garage and multi use room for gym/store/home office plus associated hardstanding and alterations to access.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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 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 Certificate of Lawful Use or Development (LDC) was well founded.
 2. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. One of these limitations, set out at Class E.1(c), is that development is not permitted by Class E if any part of the building, enclosure, pool or container would be sited on land forward of a wall forming the principal elevation of the original dwellinghouse. It is compliance with this limitation that is at dispute in this case. Consideration of this issue raises two questions: what is the original dwellinghouse for the purposes of Class E.1(c), and what is or was the principal elevation of that building?
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3. In relation to a building, other than a building which is on Crown land, the GPDO defines "original" to mean a building (a) existing on 1st July 1948, as existing on that date, or (b) built on or after 1st July 1948, as so built. It is common ground that the appeal property was constructed in or around 1958, and therefore the definition at (b) applies in this case. The appellant has provided a copy of the plans of that building. The Council has not challenged the veracity of those plans and I am therefore satisfied that these plans may be taken as showing the original dwellinghouse as so built for the purposes of Class E.1(c) of the GPDO.
4. There is no definition of the term 'principal elevation' in the GPDO. However, the *Technical Guidance on Permitted development rights for householders* published by the Department for Communities and Local Government in April 2016 (Technical Guidance) indicates that, in most cases, the principal elevation will be that part of the house which fronts the main highway serving the house. This guidance goes on to explain that the principal elevation will usually contain the main architectural features, such as bay windows or a porch serving the main entrance of the house, and that the principal elevation will usually, but not exclusively, be what is considered to be the front of the house. The Technical Guidance confirms that there will be one principal elevation on a house.
5. The first point to note is that, having regard to the wording of Class E.1(c), in this case the Technical Guidance must be applied to the original dwellinghouse and not the building as it currently stands. This means the original dwellinghouse constructed in or around 1958 as so built, as shown on the plans provided by the appellant. These plans show a modest structure with two main rooms and with the sole entrance on the north-east elevation facing, albeit at an angle, Ashmead Lane. The building shown on the plans is of relatively plain appearance, with the only architectural feature of note being a projecting bay on the north-east elevation that includes the sole entrance to the property.
6. The plans provided by the appellant also show that, at that time, Ashmead Drive was an unnamed private drive and that Ashmead Lane was the main highway. The plans do not show a vehicular or pedestrian access from Ashmead Lane to the dwelling. However, the plans do show an access from the private drive that is now Ashmead Drive that extends beyond the side of the dwelling, terminating level with the north-east elevation of the building. Given that the sole entrance to the property was then in that north-east elevation, it is clear that access to the property was through the north-east elevation but via the private drive rather than Ashmead Lane direct.
7. Nevertheless, as the appellant explains, because what is now Ashmead Drive was an unnamed private drive when the dwelling was first constructed, the dwelling took its postal address from Ashmead Lane, that being the main highway serving the house at that time. The Council is not able to confirm whether or not this was the case and I accept that access to the property was not from Ashmead Lane. However, to my mind it is logical that the property would have taken its postal address from what, at the time, was the main highway serving the house and I am therefore inclined to accept the appellant's proposition that this was the case.
8. For all these reasons, I consider that the north-east elevation of the original dwellinghouse is the principal elevation for the purposes of Class E.1(c) of the

GPDO. I acknowledge that the position has changed significantly since the dwelling was first constructed. In particular, I noted that the main entrance now faces onto Ashmead Drive and that this elevation may be now considered to be the front of the house. In this respect, I recognise that the Technical Guidance indicates that the principal elevation will usually, but not exclusively, be what is considered to be the front of the house. However, the limitation at Class E.1(c) of the GPDO specifically refers to the original dwellinghouse. The building as it currently stands has clearly been successively and substantially altered since being first constructed in or around 1958, such that it cannot now be considered to be the original dwellinghouse for the purposes of Class E.1(c).

9. The Council considers that the reasoning behind Class E.1(c) is to ensure that structures likely to have a substantial impact on the streetscene may be formally assessed by the local planning authority. However, consideration of the reasoning behind the wording of Class E.1(c) is not a matter before me: I am concerned here only with applying the actual wording of Class E.1(c) to the facts of the case, having regard to the interpretation provided by the Technical Guidance. In that respect, for the purpose of Class E.1(c), the Technical Guidance indicates that development is not permitted in any area in front of the principal elevation, including development anywhere in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house. The wording of Class E.1(c) refers solely to development 'in front' of the principal elevation and is not expressed in terms relative to the highway.
10. The footprint of the original dwelling has been largely subsumed into the dwelling as now extended. However, elements of the original roof still remain and these are plainly visible from Ashmead Lane. Based on the application drawings, and using the visible part of the original roof to establish the location of the wall forming the principal elevation, I am satisfied that the no part of the proposed detached building would be located in front of the principal elevation of the original dwellinghouse, and therefore would accord with Class E.1(c).
11. The Council is satisfied that the proposed detached building complies with the limitations at Classes E.1, E.2 and E.3 in all other respects, and I see no reason to take a different view. I therefore conclude that the proposed detached building accords with Class E of the GPDO and therefore constitutes permitted development.
12. The proposed development also includes an area of hardstanding to the side of the main dwelling and in front of the proposed detached building. The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class F(a), Part 1, Schedule 2 of the GPDO. The Council is satisfied that the proposed area of hardstanding accords with Class F(a), including the limitations and conditions set out at Classes F.1 and F.2. Again, I see no reason to take a different view.
13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a detached building, comprising a double garage and multi use room for gym/store/home office plus associated hardstanding and alterations to access was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

14. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Paul Freer

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on dated 19 December 2016 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 proposed development accords with the limitations set out in Schedule 2, Part 1, Class E and Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer

Inspector

Date: 19 December 2016

Reference: APP/N0410/X/16/3159068

First Schedule

The erection of a detached building, comprising a double garage and multi use room for gym/store/home office plus associated hardstanding and alterations to access (as shown on Drawing Nos: TL51/a and TL52/a).

Second Schedule

Land at The Lodge, Ashmead Drive, Denham, Uxbridge, UB9 5BA

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.

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

Land at: The Lodge, Ashmead Drive, Denham, Uxbridge, UB9 5BA

Scale: Not to scale

