

Appeal Decision

Site visit made on 6 December 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 6 January 2017

Appeal Ref: APP/T3725/X/16/3156418

75 Chessetts Wood Road, Lapworth, Solihull B94 6EL

- 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 Mr R Davis against the decision of Warwick District Council.
 - The application Ref W/16/0384, dated 29 February 2016, was refused by notice dated 25 April 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 development is sought is the creation of a new access to serve a hardstanding area.
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Decision

1. The appeal is dismissed.

Main Issue

2. For the avoidance of doubt, I make clear that the planning merits of the proposed development are not relevant in this appeal. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Development (LDC) was well-founded, having regard to the terms of Class B, Schedule 2 of Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).

Reasons

3. The terms of Class B of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) identify that the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, will be permitted development where that access is required in connection with development permitted by any Class in Schedule 2 of the GPDO, other than in relation to Class A of Part 2. Thus, in order to comply with the terms of Class B, the proposal would need to constitute a 'means of access' that would be required in connection with some other form of development that is permitted by any Class in Schedule 2 of the GPDO.
 4. In this case, an area of hardstanding is proposed, at the point where the access drive would terminate, and the appellant contends that the hardstanding would be permitted by the terms of Class F(a) of Part 1 of Schedule 2 which relates to *'the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse'*.
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5. The application was refused for two reasons. Firstly, the Council considers that the terms of Class B of the GPDO only permit the creation of a point of access onto Chessetts Wood Road and not the construction of the access track from that point of access to the hardstanding. Secondly, the Council contend that the existing access track would be sufficient to serve the area of hardstanding and, thus, that the proposed access track is not 'required' to serve that development.
6. The reasons for refusal do not dispute that the formation of the hardstanding itself would be permitted development. However, whilst the refusal does not relate to the formation of the hardstanding I must be satisfied that the development is lawful, having regard to the terms of the GPDO. In that context, I wrote to the parties after my accompanied site visit to seek their views as to whether the hardstanding was within the curtilage of any residential property and, if so, whether the use of the hardstanding would be incidental to the enjoyment of that property.
7. In its response, the Council stated that it considers that the area of land upon which the hardstanding would be located falls outside the curtilage of a dwellinghouse. The appellant suggested that the land is within the curtilage of The Elms and that the use of the hardstanding would be incidental to the enjoyment of that property. I have taken account of those responses in reaching my decision and have considered the access track and the hardstanding below.

The Proposed Access Track

8. The appeal site relates to land associated with 'The Elms' at 75 Chessetts Wood Road within the village of Lapworth. An existing driveway provides a means of access onto Chessetts Wood Road for The Elms and an existing dwelling to the rear which has been converted from a former outbuilding. The converted dwelling forms one part of the outbuilding and the remainder also benefits from an extant planning permission for conversion to a single dwelling. However, at present, the remainder of the building is used as garaging and storage space associated with The Elms. The three-sided structure faces onto an open courtyard which is accessed from the existing access drive. A further planning permission has been granted for the conversion of a detached stable building into a dwelling. The stable is situated to the north of the partially converted outbuilding. Thus, at present, two dwellings are served from the access onto Chessetts Wood Road and planning permission exists for the creation two more.
9. The proposed driveway would lead from Chessetts Wood Road and pass through a paddock which is situated immediately beyond the formal garden of The Elms. The route of the track would follow the garden boundary and it would terminate at the proposed area of hardstanding, adjacent to the partially converted outbuilding.
10. The GPDO does not define the term "means of access". However, under section 336 of the Town and Country Planning Act 1990, "means of access" includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street. The reference to a street indicates that the definition is much broader than the provision of a point of access onto a highway. To my mind, the expression clearly includes the potential for an

access track as well as the creation of the point of access onto the highway. In other words, the “means” by which one would move from A to B.

11. Class B allows the construction of a means of access to any development that would be permitted by Schedule 2, with the exception of development permitted under Class A of Part 2. The scope of permitted development rights under Schedule 2 is extensive and a wide range of new buildings and other development benefits from deemed permission, subject to limitations. The rights granted under Class B are clearly intended to supplement the rights granted in other Classes in Schedule 2 to enable the construction of a means of access as may be required to serve new development. In many cases, such as development relating to agriculture, telecommunications or development by statutory undertakers, the development permitted may not have direct access onto a highway and the ability to access such developments will often require more than a simple connection to a highway but will necessitate the provision of additional access tracks in order to create a ‘means of access’. In that context, I consider that the scope of Class B extends to the provision of an track in addition to the point of access
12. However, any means of access must be ‘required’ to serve a development that is permitted by any class in Schedule 2, except class A of Part 2. The existing access drive would provide a means of access to the proposed hardstanding and I find it difficult to conclude that a new access would be ‘required’ to serve that element of the proposed development. Taking the ordinary meaning of the word, it seems to me that there must be a reasonable degree of need for the access to be *required*. There is nothing to indicate that the existing access would be inadequate to serve the proposed hardstanding. Therefore, whilst the new access may be desired by the appellant I cannot conclude that it would be *required* in order to serve the proposed development which is the creation of a hardstanding. In that regard I am not satisfied that the proposal would fall within the scope of Class B, Part 2 of Schedule 2.

The Proposed Hardstanding

13. The hardstanding would extend from the existing driveway onto land that is currently part of the paddock, directly opposite from the partially converted outbuilding. The paddock, which is clearly segregated from the formal garden of The Elms by boundary fencing and established vegetation, has a non-domestic character with the appearance of rough grazing land. Given the layout of the site, the paddock may well have been used historically as grazing land in association with the stable building to the north of The Elms which now has planning permission for conversion into a dwelling. To my mind, there is a clear distinction between the paddock and the enclosed garden in terms of the way in which the land is used and the physical relationship with the dwellinghouse at The Elms. The paddock is beyond the enclosed part of the garden and has a non-domestic appearance.
14. There is no doubt that formal garden falls within the domestic curtilage of the property. A large area of land beyond the garden is within the ownership of the appellant, as indicated by the blue line on the site location plan. That land encompasses the paddock, the stable, a tennis court, the partially converted outbuilding and the driveway and open courtyard adjacent to it.
15. The partially converted outbuilding is close to the dwelling and half of the building is still in use for storage purposes associated with the property. The

outbuilding and the associated driveway and courtyard space have a clear functional and historical association with The Elms and I am satisfied that those areas fall within the curtilage of the property, as suggested by the appellant.

16. However, there is a distinct change in character as one moves from the driveway onto the paddock. Taking account of the nature of the land, the relationship with the house and the degree of separation provided by the boundary fencing, I consider that the paddock is not within the curtilage of The Elms. Accordingly, the part of the proposed hardstanding that would extend onto the paddock would not constitute permitted development under the terms of Class F.
17. Even if I were wrong on that point, the information before me does not indicate that the hardstanding would be used for a purpose that would be incidental to the enjoyment of The Elms. Paragraph 4.12 of the appellant's appeal statement indicates that the area would be used for the benefit of the dwellings to the rear, once all three have been converted. That statement is contradicted somewhat in the appellant's letter of 21 December 2016 which suggests that the hardstanding would be used for a purpose that would be incidental to the enjoyment of The Elms. Thus, there is a degree of ambiguity as to how the space would be used.
18. However, the stated rationale for the proposals is to restore an independent access for The Elms in order to maintain privacy for residents of that property once the three converted dwellings are occupied independently. The most likely way that would be achieved would be for the new access to provide access to the dwellings at the rear and for the existing access to be retained or 'restored' for the sole use of The Elms. That arrangement would avoid the need for residents of dwellings at the rear to pass immediately to the side of The Elms along the existing access. In that scenario it seems likely that the proposed hardstanding would be utilised by residents of the dwellings at the rear, as opposed to those of The Elms.
19. There would appear to be little need for residents of The Elms to utilise the extended area of hardstanding because the existing driveway and hardstanding to the side of the property would be much closer and more convenient. In that sense, the use of the hardstanding would not be incidental to the enjoyment of The Elms but would appear to be for a purpose associated with the use of the proposed dwellings to the rear.
20. In view of the above, I find that the hardstanding would not amount to permitted development under the terms of Class F, Part 1 of Schedule 2 of the GPDO. It is a form of development for which planning permission would be required and no evidence of any planning permission is before me. Given that conclusion, it follows that the access drive itself would fail to meet the terms of Class B of Part 2 of the GPDO in that it would not be required in connection with a development that is *permitted* by any Class in Schedule 2.

Other Matters

21. I note that a 2008 planning permission for the conversion of the stable indicated that the access to the dwelling would be from Chessetts Wood Road on broadly the same alignment as the proposed access in this instance. There is nothing before me to indicate that the permission was implemented such that permission for the access would remain extant. The more recent planning

permission for the conversion of the stable did not include the same means of access. I have also noted the suggestion that an access track may have been sited along the line of the proposed access at some point in the past. I find the satellite view provided by the appellant to be inconclusive as to whether an access track was present in 2008. There is little evidence of any track on the ground, save for reeds and vegetation that may indicate the presence of substrate below the grass. However, given the absence of any firm evidence regarding the presence of a track I conclude that the construction of a new access track would amount to an engineering operation for which planning permission would be required.

Conclusion

22. For the reasons set out above, I conclude that the development does not benefit from deemed planning permission granted by the GPDO or from planning permission granted in relation to the conversion of buildings at the site. In the absence of any planning permission, the proposed development would not be lawful and, accordingly, the Council's decision to refuse the application was well-founded. Accordingly, I shall dismiss the appeal.

Chris Preston

INSPECTOR