



Appeal Decision

Site visit made on 24 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 9 August 2017

Appeal Ref: APP/D0840/X/17/3173763

The Old Chapel, Orchard Lane, Helford, Helston, TR12 6JX

- 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 S E Jacobs against the decision of Cornwall Council.
 - The application Ref PA16/12101 dated 22 December 2016 was refused by notice dated 17 February 2017.
 - 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 proposed construction of two single-storey outbuildings, new access and associated hardstanding area.
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Decision

1. The appeal is dismissed.

Reasons

7. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Article 4 Direction

8. A Direction under Article 4 (1) of the Town and Country Planning General Development Order 1963 was made in April 1969. This removed permitted development rights in respect of householder extensions; householder curtilage buildings; gates; fences; walls and other means of enclosure; and the painting of the exterior.
9. The Direction aligns closely with the boundaries of the Conservation Area designated around the same time covering the historic core of the village and the wooded steeply rising slopes which form an important setting for the historic core. The Council considers that any development within this setting is likely to interrupt the unspoilt nature of the valley and compromise the character and appearance of the locality. Planning Practice Guidance at paragraph 13-049 confirms that an Article 4 can remain in place once confirmed. They should be monitored to make sure that the original reasons for using the power remain valid. The Council suggests that the original reasons remain valid, with which I agree.
10. The appellant's case is that the Direction does not prevent the formation of new accesses and hardstanding areas but in any event the Direction is no longer extant.
11. The appellant has made legal submissions (attached at EP4 to the appellant's statement) together with a later rebuttal. Essentially the question is whether the 1969 Direction removes permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 – the GPDO. The appellant's position is that the 1969 Direction is rendered meaningless, being that it seeks to prevent individuals from relying on PD rights bestowed by the 1963 Order – this being redundant as the 1963 Order is no longer in force as it relies on repealed legislation. The Order has not been carried forward to the 2015 GPDO and the Interpretation Act 1978 does not have retrospective effect. Whilst that Act carried forward the 1995 GPDO through to the 201

interpreted the position in respect of the 1969 Direction and I am not persuaded that an Article 4 Direction made under the 1963 GDO is of no effect.

15. Class 1 of Schedule 1 of the 1963 GDO restricts by condition any building required for a purpose incidental to the enjoyment of a dwellinghouse as such to 12 feet in height for a building with a ridged roof, or in any other case, 10 feet, together with standard conditions 1 and 2. The effect of the 1969 Direction was to remove these rights.
16. I am satisfied that notwithstanding the slight difference in wording between Class E relating to 'buildings etc incidental to the enjoyment of a dwellinghouse' in the GPDO 2015 to the equivalent section of the 1963 GDO, these two classes are essentially the same. As the Article 4 Direction remains in force, the two proposed outbuildings require express planning permission.
17. The Council makes reference to the proposed outbuildings complying with the physical limitations of the order but that the size goes beyond that for the development envisaged by the Order. The appellant has referred to *Emin v SSE & Mid Sussex DC [1989] 58 P&CR 416* and to appeal decision APP/R5510/X/07/2056569 but in view of my decision on the Article 4 Direction it is unnecessary for me to consider this further.

Access and hardstanding

18. Turning to the second part of the appellant's case it is evident from the 1969 Direction (attached as EP2 to the appellant's statement) that no reference is made to the creation of new accesses or hardstandings. Nor is there any reference to them in the 1963 GDO. Hard surfaces within the curtilage of a dwellinghouse used for purposes incidental to the enjoyment of the dwellinghouse are covered by Class F of the GPDO 2015 subject to the conditions at F.2.
19. The appellant has submitted further details of the proposed

21. The appellant correctly states that Class F does not specify any restrictions on raised surfaces. However, this is not relevant to development under Class F which relates to hard surfaces, not to raised surfaces. In considering the wording of Class F in a common sense manner and in the ordinary meaning of the language used, whilst it is not unreasonable to expect some increase in ground surface due to the laying of hardcore, tarmac, slabs or other hard surfacing materials, the raising of the ground by 0.3 metre exceeds what would normally be associated with a hard surface or to be considered de minimis. In any event, I have serious doubts from my observation of the site whether the appellant's proposals would be practically feasible.
22. The total depth of the parking space is substantial and the submitted details are insufficient for me to be satisfied that there is an adequate depth of land to achieve the appellant's proposals as shown on Section A-A without the need for engineering operations lower down the slope to support a hardstanding. With LDC applications, the onus rests with the appellant to submit sufficient information to describe the proposal. In this case there is inadequate detail at a satisfactory scale to show how the hardstanding would be constructed without the need for engineering works such as retaining walls or other means to support the hardstanding.
23. Additionally an application for an LDC relates to the lawfulness of a proposed development at the date the application is made. It is my understanding that at the time the application was made no works had been carried out in respect of removing the Cornish hedge or for the creation of the level area adjacent to the road. As the spoil from the hedge appears to have been used to make up part of the level area, it would be the case that additional works would have been necessary beyond those now claimed by the appellant as being only minor alterations to make the ground level. This leads me to conclude that the extent of made-up ground and the engineering works necessary to stabilise such ground would have been more extensive at the time of the application than at the time of my site inspection.
24. I conclude that the proposed hardstanding does not come within the scope of Class F of the GDPO 2015 and would require express planning permission. In view of this the creation of a new vehicular access would not be permitted development under Part 2, Class B as this only permits a means of access required in connection with development permitted by any other Class. As I have found the hardstanding to require planning permission, it follows that the access also requires express planning permission.

Conclusion