
Appeal Decision

Unaccompanied site visit made on 1 May 2018

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 08 May 2018

Appeal Ref: APP/J3720/X/17/3180170

39 New Street, Shipston-on-Stour, CV36 4EW

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use or Development (a "LDC").
 - The appeal is made by Mr & Mrs Kevin Webber ("the Appellants") against the decision of Stratford on Avon District Council ("the Council").
 - The application Ref 17/00633/LDP, dated 1 March 2017, was refused by notice dated 26 April 2017.
 - The application was made under Section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is described in the application form as, *"Removal of wagon doors and signboard over, replace wagon doors with one door and two sidelights. Replacement of two windows to match existing located at existing openings and creation of three openings with new windows to match existing. All as depicted on drawing numbered 5539-A231 with specific reference to the west elevation."*
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Decision

1. The appeal is allowed and attached to this Appeal Decision is a LDC describing the extent of the proposed operations which are considered to be lawful.

Application for costs

2. An application for costs was made by the Appellants against the Council. This application will be the subject of a Costs Decision which is likely to be issued at a later date.

Procedural Matters

3. The application was made on a form for a Lawful Development Certificate for a Proposed Use or Development under Section 192 of the 1990 Act. Whilst reference is made within the appeal paperwork to the lawful use of a workshop/storage area and garage ("the Workshop/Garage") as part of the dwelling-house at No. 39 this is not a matter to which a Section 192 application can apply.
4. In any event the Council accept that the Workshop/Garage has been used as residential accommodation at No. 39 for a sufficient period for that residential use to be lawful. The only matters in dispute is whether the proposed alterations to the frontage of No. 39 as referred to in bullet point 5 above could be carried out as permitted development.
5. I will refer to:

- a) Collectively to the proposed alterations to the frontage of No. 39 as “the Alterations”.
 - b) The Town and Country Planning (General Permitted Development) (England) Order 2015 as “the Order”.
6. No. 39 is a dwelling-house for the purposes of the Order.
7. This appeal was linked to an appeal under Section 78 of the 1990 Act which sought planning permission for the conversion of No. 39 into three dwellings¹; providing two additional homes. That Appeal Decision was issued on 4 May 2018.

Main Issue

8. The main issue in this case is whether the Council’s refusal to grant a LDC in respect of the Alterations was well-founded.

Reasons

9. Schedule 2, Part 1, Class A of the Order explains, amongst other things, that improvements or other alterations of a dwelling-house are permitted development.
10. The Alterations for which the LDC is sought include changes to the frontage of No. 39 which would comprise:
- a) The replacement of a ground floor bay window with an entrance door and windows on either side.
 - b) The removal of the large timber coach doors and their replacement with an entrance door and windows on either side. This would necessitate replacement brickwork above the head of the frame.
 - c) The replacement of two windows within existing openings.
 - d) The insertion of three new windows at first floor level.
11. The Council do not dispute that the Alterations are works of improvement or other alterations to No. 39.
12. If the Alterations are to be development permitted by Class A they would be subject to compliance with conditions. The condition that is in dispute in this case is the one which requires that the materials to be used in the exterior of the Alterations must be of similar appearance to those used in the construction of the exterior of No. 39. I will refer to this condition as “the PD Condition”.
13. In April 2016 the Department for Communities and Local Government published “Permitted development rights for householders - Technical Guidance” (“the Technical Guidance”). The Technical Guidance explains, amongst other things, that:
- a) The PD Condition is intended to ensure that any works to alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development.

¹ Planning Inspectorate Ref APP/J3720/W/17/3180167

- b) The materials used should be of similar visual appearance to those in the existing house.
 - c) It does not mean that the materials need to be the same materials.
14. The Technical Guidance gives an example that it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that the new windows should give a similar visual appearance to those in the existing house, for example in terms of their overall shape, colour and size of the frames.
15. The application form states that the replacement windows in the existing window openings at No. 39 would match the existing windows and the new windows in the three new openings would also match the existing windows. In my assessment if the replacement windows and the windows in the new openings match the existing windows then the materials to be used must be in compliance with the PD Condition.
16. The replacement of the ground floor bay window with an entrance door and windows on either side will use materials that have a similar appearance to the bay window within the existing three storey element of No. 39. Accordingly, this part of the Alterations must comply with the PD Condition.
17. The Alterations include the removal of the large timber coach doors and their replacement with an entrance door and windows on both sides and replacement brickwork above the head of the frame. It is proposed that the brickwork will be similar in appearance to the existing brickwork at No. 39. Accordingly, this part of the Alterations must comply with the PD Condition.
18. The replacement glazed screen and door would be manufactured in wood and these materials (the wood and glazing) would be of a similar appearance to those that currently exist in No. 39. In visual terms this replacement feature would have the same vertical emphasis as the bay window and ground floor windows in the three storey element of No. 39. In my assessment this section of the Alterations also complies with the PD Condition.

Overall Conclusions

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the Alterations was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act and grant the Appellants a LDC.

Tim Belcher

Inspector

Lawful Development Certificate (“the LDC”)

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991) (“the 1990 Act”)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 March 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto shown edged in red on the Plan attached to this LDC, would have been lawful within the meaning of Section 191 of the 1990 Act for the following reason:

The operations described in the First Schedule would be improvements or other alterations to a dwelling-house that was permitted development by virtue of Class A, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Accordingly, no enforcement action could be taken against the operations and those operations would not constitute a contravention of any of the requirements of any Enforcement Notice then in force.

Signed: *Tim Belcher* – Inspector

Date: 08 May 2018

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First Schedule

1. Removal of wagon doors and signboard over and replace wagon doors with one timber/glazed door and two timber/glazed sidelights.
2. Replacement brickwork above the head of the frame using brickwork to match the existing brickwork at No. 39.
3. Replacement of two windows to match existing windows at No. 39 located at existing openings.
4. Formation of three openings together with new timber windows to match existing windows at No. 39.

All as depicted on the drawing numbered 5539-A231 P3 with specific reference to the west elevation only.

Second Schedule

39 New Street, Shipston-on-Stour, CV36 4EW

NOTES

This LDC is issued solely for the purpose of Section 192 of the 1990 Act.

It certifies that the 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, were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

This LDC applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached Plan. Any operations which are materially different from those 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 LDC is subject to the provisions in Section 192(4) of the 1990 Act which state that the lawfulness of a specified operation is only conclusively presumed where there has been no material change, before the operations are begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the Plan referred to in the LDC dated 08 May 2018

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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