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## Appeal Decision

Site visit made on 7 February 2020

**by D Hartley BA (Hons) MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 February 2020**

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**Appeal Ref: APP/J4423/X/19/3234000**

**Heather Bank, Holdworth Lane, Sheffield S6 6SN**

- 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 Dr A L Moody against the decision of Sheffield City Council.
  - The application Ref 18/04769/LU1, dated 22 December 2018, was refused by notice dated 8 July 2019.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
  - The development for which a certificate of lawful use or development is sought is described as *"construction of a garage outbuilding under Class E of the Town and Country Planning (general Permitted Development) (England) Order 2015 Part 1 of Schedule 2. The outbuilding is an ancillary building to the main dwellinghouse reasonably required to serve as a shelter for the family's large touring caravan and motor vehicles on a weather-exposed and relatively upland location. The garage block has a standard double garage door aperture on one side and another aperture, higher than standard height garage door, to accommodate entry for the touring caravan"*.
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### Decision

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

### Procedural Matters

2. The description of development in the Council's refusal notice is more succinct than that in the banner heading above. It describes the development as an *"application to establish the lawful development of a detached garage outbuilding (application under Section 191)"*. This suitably reflects what is shown on submitted drawing 04 'proposed plans and elevations'. For the purposes of my decision, I have therefore used the description of development from the Council's refusal notice.
3. On the site visit, it was evident that a ceiling (including lighting) had recently been formed in the garage albeit that there was no access (e.g. a staircase) to the roofspace above it. The main parties agreed on the site visit that this did not reflect what was shown on the submitted plan (i.e. a garage where the internal space was open to the roof rafters) or indeed what the garage was like when the LDC application was submitted to the Council. For the avoidance of doubt, I have therefore determined this appeal on the basis of a garage which does not include a ceiling, as per the submitted plan.

## **Application for costs**

4. An application for costs was made by Dr A L Moody against Sheffield City Council. This application is the subject of a separate Decision.

## **Main Issue**

5. An application for a certificate of lawful use is not a planning application. The application is made purely to establish whether the garage would have been lawful, in planning terms, at the time the application was made. As such, and acknowledging comments made by other interested parties, the planning merits of any development are not relevant to my decision.
6. The main issue is whether the Council's decision to refuse the LDC application was well founded with particular regard to whether (i) the building is single storey with reference to Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) and (ii) whether, as a matter of fact and degree, the works of excavation were incidental to the construction of the garage.

## **Reasons**

7. In order for an LDC to be granted under section 191 of the Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability.
8. In this case, there is no suggestion from the main parties that the garage has not been built in accordance with drawing No 04 'proposed plans and elevations'. I have no reason to consider otherwise. On the evidence before me, I am satisfied that the garage has been erected for a purpose that is incidental to the enjoyment of the dwellinghouse, namely the parking of a touring caravan and three motor vehicles. This is not disputed by the main parties and on my site visit I was able to see that vehicles were parked in the garage.

### *Whether single storey*

9. The point of contention between the main parties relates to whether the garage is "*single storey*" and hence whether it is permitted development taking into account paragraph E.1 (d) of Class E the Order. I agree with the main parties that the garage is permitted development in respect of compliance with all of the other restrictions set out within paragraphs E.1 to E.4 of the Order. There is no suggestion from any party that the garage has not been erected within the curtilage of the dwellinghouse. I have no reason to consider otherwise.
10. There is no definition in the Order as to what is "*single storey*". However, I am persuaded by the view expressed by the appellant who refers to the Collins English Dictionary definition as "*having one floor level*". In this case, the LDC garage has one floor and hence I consider that it is permitted development with reference to paragraph E.1 (d) of Class E of the Order.
11. I appreciate the Council's concern that the building "*could be readily adapted without planning permission to provide upper floor accommodation*". However, this does alter my view that the LDC building is single storey. The fact that it may be possible to create an additional floor in the future does not in itself persuade me to deviate from my view that the LDC building is single storey.

### *Excavation works*

12. In this case, the evidence indicates that excavation works have been undertaken in conjunction with the erection of the garage. The land was/is sloping and consequently earth has been removed, and the land level altered, as part of the erection of the garage. The Council does not dispute the appellant's evidence that the volume of earth removed from the slope approximately equates to the void left to accommodate the erection of the garage. Indeed, this reflects what I could see on my site visit with surrounding land continuing to slope and trees behind the garage appearing to have been unaffected by the development.
13. The Courts have held that excavation works can amount to a separate act of substance (e.g. an engineering operation) requiring planning permission or, put another way, can go beyond what is incidental to what is permitted development. However, this is a matter for the decision maker on a fact and degree basis.
14. In this case, I have no reason to doubt that the excavation works were carried out to facilitate the erection of the garage. Furthermore, I note that the appellant says that the works were carried out as one single operation and within one month. In addition, I can fully understand why the excavation works were carried out, i.e. to ensure a flat floor level for the parking of the said vehicles. I acknowledge the Council's concern about the resultant height of the garage building, but I have already found that in terms of its height and position it is permitted development under Class E of the Order. I would also add that the Order does not in itself prohibit Class E permitted development buildings merely because they would be provided on a sloping site. Indeed, Article 1(3) of the Order makes reference to land that is not "*uniform*".
15. On the evidence before me, and as a matter of fact and degree, I find that the excavation works that were carried out in association with the erection of the garage building were incidental to the Class E permitted development.

### **Conclusion**

16. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a detached garage outbuilding 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 as amended.

*D Hartley*

INSPECTOR



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

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**IT IS HEREBY CERTIFIED** that on 22 December 2018 the use/operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The garage building was permitted development by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

*D Hartley*  
Inspector

Date: 12 February 2020

Reference: APP/J4423/X/19/3234000

## ***First Schedule***

Application to establish the lawful development of a detached garage outbuilding (application under Section 191)

## ***Second Schedule***

Land at Heather Bank, Holdworth Lane, Sheffield S6 6LL



## Plan

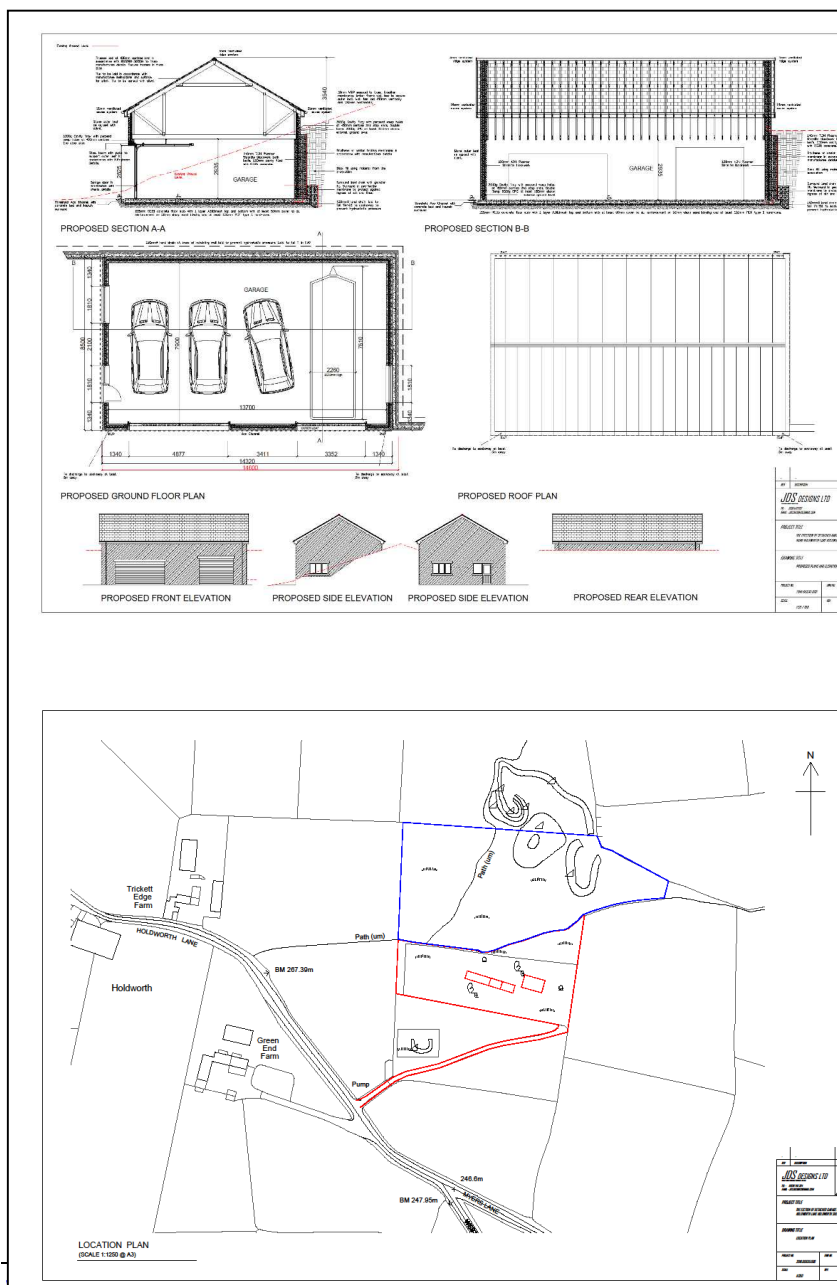
This is the plan referred to in the Lawful Development Certificate dated: 12 February 2020

**by D Hartley BA (Hons), MTP, MBA, MRTPI**

**Land at:** Heather Bank, Holdworth Lane, Sheffield S6 6LL

**Reference:** APP/J4423/X/19/3234000

**Scale:** DO NOT SCALE



## NOTES

This certificate is issued solely for the purpose of Section 191 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 were lawful, on the certified date and, thus, 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 plans. 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.