



Appeal Decision

Site visit made on 28 January 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/Y9507/X/19/3227482

Newtimber Place, Stables Cottage, Newtimber Place Lane, Newtimber BN6 9BU

- 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 Andrew Clay against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/00007/LDP, dated 2 February 2019, was refused by notice dated 10 April 2019.
 - 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 alterations and additions to roof see application statement and related drawings which accompanied the September 2018 Planning Application ref: SDNP/18/04919/HOUS.
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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 proposed operation which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Andrew Clay against South Downs National Park Authority. This application is the subject of a separate Decision.

Reasons

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to decide whether, on the evidence, the Local Planning Authority's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
4. The application seeks to establish that it would be lawful to carry out alterations and additions to the roof for which planning permission has been granted, without any further consent. The Authority refused the application on the basis that the building is curtilage listed and therefore listed building consent would be required for the work. The Authority referred to the

requirement of Section 7 of the Planning (Listed Buildings and Conservation) Act 1990 (as amended) (LBCA) in its reason for refusal.

5. However, the grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements, such as the LBCA, as set out in the Planning Practice Guidance (PPG)¹. As a result, whether or not the building is a curtilage listed building is not question that stands to be answered under section 192 of the 1990 Act, which is solely concerned with lawfulness within the meaning of section 191 of the Act.
6. Since planning permission has been granted for the alterations and additions to the roof, it would clearly have been lawful in terms of section 191 of the 1990 Act at the date of the application, hence a certificate can be granted. However, I acknowledge that this does not appear to be, ultimately, what the appellant sought to establish.
7. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development in respect of alterations and additions to roof in accordance with planning permission reference SDNP/18/04919/HOUS 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.

N Thomas

INSPECTOR

¹ See Paragraph: 004 Reference ID: 17c-004-20140306 Revision date: 06 03 2014



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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 February 2019 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:

Planning permission has been granted for the development under reference SDNP/18/04919/HOUS and was extant on the date of the application.

Signed

N Thomas

INSPECTOR

Date: **12 February 2020**

Reference: APP/Y9507/X/19/3227482

First Schedule

Alterations and additions to roof see application statement and related drawings which accompanied the September 2018 Planning Application ref: SDNP/18/04919/HOUS

Second Schedule

Land at Newtimber Place, Stables Cottage, Newtimber Place Lane, Newtimber BN6 9BU

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.



Plan

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

by **N Thomas MA MRTPI**

Land at: Newtimber Place, Stables Cottage, Newtimber Place Lane, Newtimber BN6 9BU

Reference: APP/Y9507/X/19/3227482

Scale: Not to scale

