
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref: APP/C1570/X/19/3230395

Outlook, Wrights Green Lane, Little Hallingbury, Bishops Stortford, Herts CM22 7RH

- 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 Dean Barclay against the decision of Uttlesford District Council.
 - The application, Ref UTT/19/0013/CLE, dated 2 January 2019, was refused by notice dated 1 February 2019.
 - The application was made under section 191(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 described as two small extensions to the rear, dormer roofs on both rear bedrooms and removing garage door to install a new window.
-

Decision

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

Application for costs

2. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Background and Preliminary Matters

3. Planning permission was granted on the 5 February 2015 for the erection of a dwelling in the rear garden of The Gables, Goose Lane, Little Hallingbury¹. This permission was subject to seven conditions of which Nos 2-6 required various details to be approved before the start of the development. Permitted development (PD) rights, as set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) were not removed by any condition. It would appear that conditions Nos 2-6 were discharged by February 2016 and thereafter the dwelling was built.
4. During construction works the appellant laid foundations for two small extensions to the rear of the property but otherwise I am advised that the development was carried out in accordance with the approved plans. The appellant states that after the property was occupied, he erected the rear

¹ Ref: UTT/14/3735/FUL

extensions, added the dormer roofs and replaced the garage door with a window. He then applied for an LDC to confirm that the works were PD. This is the application referred to in this appeal.

5. However, the appeal is lodged only in respect of the dormer windows and the window that replaced the garage door as the appellant realised the rear extensions do not benefit from PD. He therefore submitted an application² under section 73 of the Act in respect of the rear extensions. He is permitted to lodge his appeal in this manner, that is for part of the development, as this is allowed for under s195 of Town and Country Planning Act 1990 (the Act). The s73 application was granted by the Council on 11 September 2019. I shall therefore confine my decision to the consideration of whether the Council's decision in respect of the remaining development was well-founded or not.
6. Section 191(4) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the operations described in the application they shall issue a certificate to that effect. In any other case they shall refuse the application. Planning merits, as raised by third parties, do not fall to be considered in applications for LDCs.
7. Applying the terms of s191(4) of the Act to the appeal proposal, the Council has determined the application for the window that replaced the garage door and the erection of the dormers against the provisions set out in Schedule 2, Part 1, Classes A and B of the GPDO.

Reasons

8. The principle point at issue is the Council's determination, in the absence of any evidence to the contrary, that the works were carried out prior to the completion and occupation of the dwelling, during which time PD rights did not exist. The Council accepts that in all other respects the alterations to the front elevation of the garage and the erection of the dormers accord with the limitations set out in Classes A and B of the GPDO and I see no reason to take a different view.

The evidence

9. The appellant submits the following, to demonstrate that the works were carried out after the completion and occupation of the dwelling, in affidavits sworn on the 23 May 2019 and the 25 November 2019:
 - The erection of the dwelling was completed by the 26 November 2018. The evidence for this is shown in an email dated the 26 November 2018 sent to the Council requesting a postal address and name for the property.
 - An email dated the 3 December 2018 from the Council shows they accepted the name 'Outlook'.
 - The air tightness of the dwelling was tested on the 23 November 2018. The assessment for the purposes of issuing the statutory energy performance certificate (EPC) was carried out on the 29 November 2018 and the certificate was issued the same day. The evidence for this is shown on page 27 of the exhibits. The EPC certificate is confirmation that the dwelling as a

² Ref: UTT/19/1742/FUL

whole has been completed and the NHBC certificate was issued on the 30 November 2018. This is only issued after all the works have been completed and all services are connected.

- On the 30 November 2018 Mr Carroll moved into the property. The Council were informed as Council Tax was now due on the property. The evidence for this is a Council Tax bill for the period dated November 2018 to March 2019.
- On the 6 December 2018 works began on the garage. The Council's Building Control Inspector visited the site on the 10 December 2018 by which time Mr Carroll had moved out of the dwelling (leaving some of his possessions behind) as the property was now uninhabitable due to the works taking place. The construction of the dormers started after the 10 December 2018.

Assessment

10. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the 'balance of probability'. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided that it is sufficiently precise and unambiguous.
11. It is considered, as the Courts have held, that there has to be a dwelling house in existence for PD rights to be exercised. A house under construction is not a dwelling for PD purposes. The appropriate test is 'substantial completion' as described in *Sage*³. The development must be carried out both internally and externally in accordance with the planning permission. The Council do not dispute that the dwelling was built in accordance with the approved plans. However, they also refer in their submissions at one point to the test including occupation of the dwelling. This is not necessary though, as it is sufficient that the dwelling is substantially complete with all the facilities for day to day living before the exercise of PD rights.
12. The appellant's evidence shows that the dwelling house was substantially complete by the end of November 2018. Thereafter work began on the garage, which was inspected by the Council's Building Control Officer on the 10 December 2018. The dormers were built afterwards.
13. Whilst progress on the dormers was remarkably quick given the time of year and the date of the LDC application, on the basis of the evidence submitted, it is considered, on the balance of probability, that the dwelling was substantially complete before the garage works and the dormers were constructed. This is now conceded by the Council in their response to the appellant's evidence. Consequently, I find the alterations benefit from the PD set out in Classes A and B of the GPDO and the development is therefore lawful.

³ *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] 1 WLR 983

Conclusion

14. 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 the dormer roofs on both rear bedrooms and removing the garage door to install a new window 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 Fleming

INSPECTOR



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

IT IS HEREBY CERTIFIED that on the 2 January 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of the dormers and the alterations to the garage constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 as amended, for which planning permission is required. The dwelling house was substantially complete before the works took place. As such, planning permission is granted by Article 3(i) of the Town and Country Planning (General Permitted Development)(England) Order 2015, since the development falls within Classes A and B of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming

Inspector

Date: 14th February 2020

Reference: APP/C1570/X/19/3230395

First Schedule

The erection of dormer roofs on both rear bedrooms and removing the garage door to install a new window.

Second Schedule

Land at Outlook, Wrights Green Lane, Little Hallingbury, Bishops Stortford, Herts
CM22 7RH

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 was /were 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.

Plan

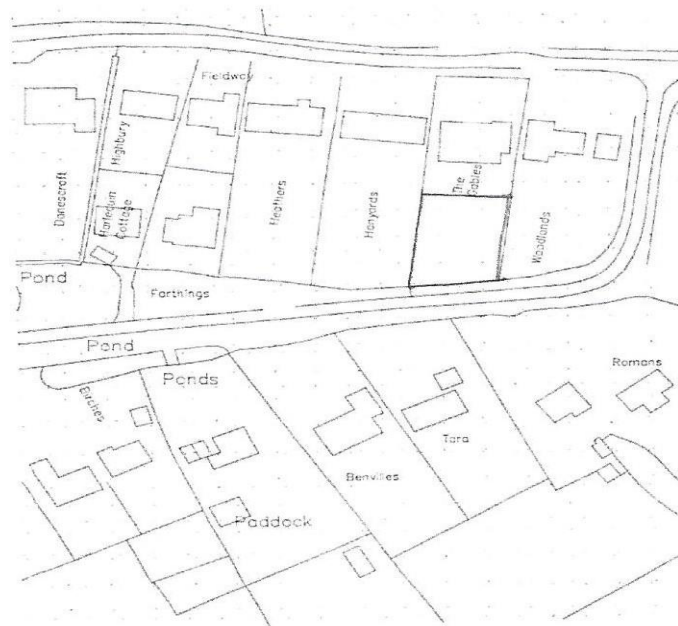
This is the plan referred to in the Lawful Development Certificate dated: 14th February 2020

by D Fleming BA (Hons) MRTPI

Land at: Outlook, Wrights Green Lane, Little Hallingbury, Bishops Stortford, Herts CM22 7RH

Reference: APP/C1570/X/19/3230395

Scale: nts



Location Plan

Scale 1:1250



A horizontal scale bar with alternating black and white segments. Above the bar, numerical markings are provided at intervals of 10, from 0 to 50.