



Appeal Decision

Site visit made on 17 February 2020

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 20 February 2020

Appeal Ref: APP/B2355/X/19/3221846

Stone Acre Farm, Rochdale Road, Ramsbottom, Bury, BL0 0RL

- 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 T Naughton against the decision of Rossendale Borough Council.
 - The application Ref: 2018/0420, dated 8 August 2018, was refused by notice dated 2 October 2018.
 - 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 erection of a conservatory.
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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 operation which is considered to be lawful.

Preliminary matter

2. No-one representing the Council attended the site at the appointed time. Contact was made with the Council by telephone and it was agreed that the site visit could go ahead in their absence.

Reasons

3. Stone Acre Farm is a stone-built, detached dwelling sited in open countryside in an elevated position to the NW of Rochdale Road. Its front elevation faces the road but is not visible due to intervening woodland. Planning permission was granted by the Council in December 2006 for a single storey extension to the front of the dwelling, in the form of a conservatory (Ref: 2006/612).
4. There is in situ a stone built dwarf wall, within which is a concrete floor slab, designed to accommodate the remainder of the approved timber conservatory. It appears, on the balance of probability, that building operations commenced on site within the requisite three year period but that work ceased when the house was re-possessed; this timescale is no longer disputed by the Council. The present owner now wishes to ascertain if the building works amounted to 'a material operation comprised in the development' under s.56(2) of the Act.
5. When planning permission is granted, development must take place in accordance with the permission and conditions attached to it. However, in this

case, the footprint of the development as approved is 6286mm x 3074mm, whilst the footprint as built measures 6956mm x 3048mm. It is common ground that the 26mm variation in the depth of the structure should be regarded as *de minimis*. However, the Council considers the additional 670mm width of the development to be a material difference from the approved scheme such that the works undertaken do not comprise works to implement the permission.

6. In deciding an issue of this type, the courts¹ have held that there is an obligation to consider not only the differences between the works carried out and the approved plan but also the significance of the differences. Similarities and the degree of compliance with the plan are also relevant.
7. The appellant submits that the discrepancy in question is a simple setting out error on the part of the builder, amounting to the combined width of the two side dwarf walls. The concrete slab is of the correct dimensions to allow the works to be completed exactly as per the plans. Furthermore, as the front wall is in the approved position, that in itself comprises a material operation.
8. I agree with the Council that the additional width of the works can not be regarded as *de minimis*. However, the extra width would still result in the conservatory appearing as a fairly modest addition to a substantial dwelling. The continuation and completion of the development as indicated would be to produce a conservatory extremely similar in character and appearance to that which was approved. The position of the front wall complies with that on the plan. Its additional width does not appear to affect any architectural features of the dwelling. Furthermore, the variation would be barely noticeable from within the dwelling's own forecourt and unseen from the public domain. Accordingly, in this particular context, I regard the development undertaken as not being materially different from the approved scheme.
9. Having come to the above conclusion, I consider the works carried out to amount to a material operation comprised in the development granted planning permission by the Council under reference no. 2006/612. Therefore, 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 erection of a conservatory 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.

B.S. Rogers

Inspector

¹ Imperial Resources SA v FSS and Kensington and Chelsea RBC [2002]



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 8 August 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the dwarf walls and the floor slab commenced within three years of the grant of planning permission and amounted to a material operation comprised in the development granted planning permission by the Council on 19 December 2006 under reference no.2006/612.

Signed

B.S. Rogers

Inspector

Date

Reference: APP/B2355/X/3221846

First Schedule

Erection of a conservatory

Second Schedule

Land at Stone Acre Farm, Rochdale Road, Ramsbottom, Bury, BL0 0RL

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.