



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

Appeal Ref: APP/A0665/X/19/3239071

Acorn House, Dog Lane, Kelsall, Chester CW6 0RP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Mrs V Slater against the decision of Cheshire West & Chester Council.
 - The application Ref 19/01350/LDC, dated 5 April 2019, was refused by notice dated 28 May 2019.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is the installation of a dormer window.
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Preliminary Matters

1. There is a related appeal at the property, against the Council's refusal in part to grant a LDC for "C3 – dwellinghouses", which was made under section 191(1)(a) of the 1990 Act as amended (Ref APP/A0665/X/19/3239073). This is the subject of a separate Decision.
2. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as a LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the development are not relevant in the context of an appeal made under Section 195 of the 1990 Act as amended.

Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

6. Section 192(1)(b) of the 1990 Act as amended enables any person to apply to the local planning authority for a certificate to the effect that any operations proposed to be carried out in, over or under land would be lawful. Section 191(2)(a) sets out that operations are lawful at any time if no enforcement action may be taken in respect of them because they did not require planning permission.
7. The appellant argues that the proposed dormer extension has planning permission by virtue of Article 3, and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), which relates to additions to the roof of a dwellinghouse.
8. The property subject to the appeal is a former barn, which was converted pursuant to planning permission (Ref 03/01126/FUL, dated 8 August 2003) (the 2003 permission) for "conversion to live/work unit plus stables/garage". Condition 21 of that permission removed permitted development rights from the property. It states: "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking and re-enacting that Order with or without modification), no development falling within Class(es) A, B, C, D, E, F, G and H of Part 1 and Classes A and C of Part 2 to Schedule 2 thereof shall be carried out without the grant of planning permission by the local planning authority".
9. A further condition, No 18, states: "The occupation of the building shall be limited to persons solely or mainly employed in the business occupying the office area on the ground floor of the dual use unit, or a widow or widower of such a person, or any resident dependents".
10. Condition 20 states that the "planning permission is for the use applied for only, ie a dual office/residential use, and for no other purpose unless a further planning permission has been granted by the Local Planning Authority".
11. The Council refused to issue the LDC because it considered the imposition of condition 21 on the 2003 permission, withdrawing permitted development rights, was valid as "the development was permitted for use primarily as a dwellinghouse". Therefore, it is first necessary for me to consider the nature of the 2003 permission.
12. When interpreting planning permissions, the basic rule is that the permission should stand by itself, and the meaning be clear within the four corners of the document. If the permission clearly incorporates the application and plans, as in this case, and there is something which is not clear, then the application and plan may be used as aids to interpretation to define the scope of what is permitted¹.

¹ *Slough Estates v Slough BC* (No 2) [1970] 2WLR 1187.

13. It is clear from the description of development given by the 2003 permission that approval was given for a live/work unit. The approved plans show the ground floor of the building would accommodate a reception area, a staff kitchen, two offices and a meeting room. The first floor also shows an area reserved for company visitors. The layout would have enabled separation between the areas set aside for private residence and the business use.
14. The Council initially indicated there would have been 60/40 split of residential to workspace, although it is now considered this was a "conservative estimate". Nonetheless, the scale of the office use shown on the approved plans, and the fact that two uses are specified on the planning permission, shows that the office use was not incidental to the residential use. The approved development comprised a mixed use consisting of two primary uses operating within the same planning unit. A mixed use as a live/work unit, in the circumstances before me, is 'sui generis' for the purposes of the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order).
15. I consider that condition 21 was not lawful as the permitted development rights set out in that condition (Class(es) A, B, C, D, E, F, G and H of Part 1) related to development within the curtilage of a dwellinghouse. As explained, planning permission was given for a live/work unit, which is a 'sui generis' use. I note this finding is consistent with an appeal decision (Ref APP/H1840/W/17/3176897, dated 15 November 2017) in which the Inspector, when considering suggested conditions, found that a condition restricting permitted development rights for a live/work unit would not be necessary, as the development was not a dwellinghouse for the purposes of the GPDO 2015. The consequence is that the permitted live/work unit would not have benefitted from the permitted development rights afforded to a dwellinghouse and, on this basis, the proposed dormer extension would not have been lawful.
16. However, there is a further relevant permission which must be considered. The Council issued a certificate of lawfulness for "occupation of Acorn House without compliance with condition 18 of planning permission 03/01126/FUL (restricting occupancy)" (Ref. No: 16/05323/LDC, dated 4 February 2017) (the 2017 LDC). The effect of the 2017 LDC was to remove the condition so that the occupation of the building would not be limited to persons associated with the business occupying the office area. Nonetheless, the permission for a live/work unit remained, albeit the business and residential areas could be occupied independently. The 2017 LDC, in itself, did not establish that a material change of use from a live/work unit to a single dwellinghouse had occurred and was, therefore, lawful. However, the evidence submitted in support of that application is relevant to the matters before me.
17. I have also been referred to a later planning permission for the "removal of condition 4 (permitted development) of 18/00327/FUL", (Ref 19/00062/S73, dated 1 March 2019) (the 2019 permission). However, this is of limited assistance as it simply removed a duplicating condition concerning permitted development rights. Permission 18/00327/FUL, dated 23 March 2018, gave approval for a front porch and a rear dormer extension to the live/work unit. The Council was of the opinion that condition 21 of the 2003 permission was still in force and, as such, the imposition of a further condition to the same effect was not necessary. Hence, the 2019 permission was issued.

18. Finally, the Council granted a LDC for the “residential occupation of Acorn House in breach of conditions 18 and 20 on Planning Permission 03/01126/FUL for more than 10 years” (Ref 19/02735/LDC, dated 9 October 2019) (the 2019 LDC). The effect of the 2019 LDC was to remove condition 20 (condition 18 having already been removed by the 2017 LDC), which restricted the use to that applied for, a dual office/residential use. In granting this LDC, the Council modified the description of development from that specified on the application form, “C3 – dwellinghouses”.
19. However, this is not what was sought by the appellant who wished to establish that a material change of use of the building from a live/work unit to a dwellinghouse occurred more than four years prior to the date of the application and is now immune from enforcement action. Consequently, an appeal was made under section 195 of the 1990 Act as amended against the Council’s refusal to issue a certificate of lawful use or development in part, with “part” in this context meaning the Council’s modification of the development described in the application.
20. I have considered the appeal against the 2019 LDC in a separate Decision, as stated above. I found that the appellant has shown, on the balance of probability, that a material change of use to a dwellinghouse occurred on or before 23 July 2015 and continued after the date of change without any significant interruption. On that basis, a lawful development certificate, dating from 23 July 2019, (the date of the relevant application) for “C3 – dwellinghouses” at the appeal premises has been issued.
21. However, as the application for the proposed dormer extension, subject to this appeal, pre-dated the change of use application, I must go on to consider whether the use would have been lawful on 5 April 2019.
22. The evidence submitted in support of the 2019 LDC application, and the subsequent appeal, shows the residential occupancy extended beyond the required four years. In particular, the Council has stated that “the LPA’s position is that the property has been primarily in residential use for over 10 years”². Furthermore, I note that a Statutory Declaration, dated 2 November 2016, submitted by the previous owner, stated that the building had been occupied solely and continually as a residence (without any connected work related activity) since 26th November 2006. A further Statutory Declaration, dated 19 July 2019, has been submitted by the appellant confirming that they occupied the property as a primary residence from 15 November 2015. Therefore, I am satisfied that the material change of use to a dwellinghouse occurred prior to 5 April 2015 and continued after the date of change without any significant interruption. The use of the building as a dwellinghouse would have been lawful on the date of the application for the dormer window. Crucially, all lawful development attracts permitted development rights under the GPDO, and so the proposal would have been lawful at the date of the application.
23. Overall, the appellant has shown, on the balance of probability, that the proposed dormer window would have benefitted from deemed planning permission by virtue of Article 3, and Schedule 2, Part 1, Class B of the GPDO, at the date of the application.

² Officer Report 19/02735/LDC.

Conclusion

24. 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 installation of a dormer window was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Decision

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

Debbie Moore

Inspector

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 5 April 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probability, that the proposed dormer window would have benefitted from deemed planning permission by virtue of Article 3, and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), at the date of the application.

Signed

Debbie Moore

Inspector

Date: 22 April 2020

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First Schedule

Installation of a dormer window

Second Schedule

Land at Acorn House, Dog Lane, Kelsall, Chester CW6 0RP

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 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 certificate 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 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: 22 April 2020

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Scale: NTS

