
Appeal Decisions

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal A: APP/V0510/X/19/3229181

62 Chapel Hill, Holt Fen, Little Thetford, Cambridgeshire CB6 3HB

- 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 Jon Wright against the decision of East Cambridgeshire District Council.
 - The application Ref 18/01418/CLP, dated 5 October 2018, was refused by notice dated 9 January 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is described as proposed extensions and an outbuilding.
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Appeal B: APP/V0510/X/19/3238023

Harrimere, 62 Chapel Hill, Holt Fen, Little Thetford, Cambridgeshire CB6 3HB

- 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 an LDC
 - The appeal is made by Mr Jonathon Wright against the decision of East Cambridgeshire District Council.
 - The application Ref 19/00712/CLP, dated 31 May 2019, was refused by notice dated 23 July 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is described as "drawings/plans enclosed". For clarity, what is sought is confirmation that an extension can lawfully be built following the failure of the Council to determine a previous application.
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Appeal A – Decision

1. The appeal is allowed in respect of the proposed extension to the northeast side elevation and the proposed porch to the southwest side elevation and dismissed in respect of the proposed extension to the southeast elevation and the proposed outbuilding, and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Appeal B – Decision

2. The appeal is dismissed.

Appeal A - Preliminary Matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that these appeals can be determined without the need for a site visit. This is because I can reach a decision based on the information already available. Both parties were invited to comment on this matter, and both agreed to the appeal proceeding on this basis.
4. There appears to be some confusion when referring to the building's elevations. The appellant refers to the elevation "with the front door on" as the northwest (NW) elevation. This elevation is the southwest (SW) elevation and will be correctly referred to as such in my decision.
5. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
6. For the avoidance of doubt, in an appeal under s195 of the 1990 Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.

Appeal A - Main Issue

7. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under the provisions of Schedule 2, Part 1, Class A and Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

8. The appeal property is a former stable block which has the benefit of an LDC issued in May 2016¹ (the 2016 LDC) which confirmed its lawful use as a dwellinghouse. The development proposed consists of a porch, an extension to two elevations and the addition of a detached two bay cart lodge and garden room. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse and Class E permits, amongst other things, a building required for purposes incidental to the enjoyment of the dwellinghouse within the curtilage of a house.
9. The Council determined that the proposed development would not have been lawful, at the time of the application, because the proposed enlargements and the proposed outbuilding would be on land forward of, and would extend beyond, a wall which forms the principal elevation of the original dwellinghouse. The proposal would therefore not fall within the limits of PD as set out in Schedule 2, Part 1, Class A and Class E of the GPDO.

¹ LPA ref 15/01592/CLE Certificate of Lawfulness for existing use – dwelling house

10. The appeal rests on the Council's view that the principal elevation of the property is the SE elevation. The determining factor being that this elevation displays the main architectural features, the most prominent elevation when entering the site through the (vehicular) access gate, and the massing of the elevation. Furthering the argument, the Council also refer to the plans which accompanied the 2016 LDC that referred to the SE facing elevation being the "front of the dwelling".
11. The appellant argues that the SW elevation clearly fronts the highway, has the main entrance and is the first and only elevation seen when entering the site through the, albeit overgrown, pedestrian gateway. To support this, an interested party recounts the use of the small gate to access the property and refers to the parking and turning area to the front of the property. The appellant argues that as the doorway is the only entrance into the building, it provides the main architectural feature of the building denoting the 'front'. Furthermore, the appellant notes the "only private amenity space" is to the SE of the site and argues that such space is "mostly" located to the rear or side of a dwelling and not the front. The appellant also refers to the 2016 LDC and reasons that the application was purely to establish the use of the building, not to assess the front elevation, and so should not carry any weight.
12. The appellant relies on guidance produced by the Department for Communities and Local Government *Permitted development for householders, Technical guidance* (2017)² (the Technical guidance). This defines the term "Principal elevation" to be, in most cases, *"that part of the house which fronts (directly or at an angle) the main highway³ serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house"*.
13. Taking account of the evidence before me, it falls to me to take a view as to which forms the principal elevation of the dwellinghouse. The SW elevation faces the highway and presents the main doorway into the property. However, this elevation, according to the plans and description, presents a single opening on a narrow span wall with no windows or additional architectural features. Whereas the SE elevation, with its windows and closed and boarded stable doors, along with presenting the widest exposed elevation, would result in this elevation having greater prominence. Furthermore, I consider that most people viewing the building would take the SE elevation as being the front of the house, as indicated in the plans accompanying the 2016 LDC application.
14. The appellant refers to the expanse of land to the SE being the "private amenity area" for the property which is not usually located to the front. However, it is not uncommon for rural properties to be positioned less 'traditionally' within their curtilage with outdoor areas found on any sides. The site also has a vehicular access further to the south which, as described by the interested party, gave access to "the parking and turning area to the front of the property". Overall, I consider that the principal elevation of the appeal property is the façade which faces the SE.

² The 2017 TG, since updated, was the current version at the time of the application.

³ Highway is defined by the TG as 'a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order it also includes unadopted streets or private ways.'

15. Therefore, I am satisfied on the balance of probability and based on the available evidence, that the extension to the SE elevation would breach condition A.1.(e)(i) because it would extend beyond a wall which forms the principal elevation. Similarly, the proposed outbuilding would breach condition E.1.(c) of Class E because the building would be situated on land forward of a wall forming the principal elevation.
16. However, although the Council raised no specific objections, by my own assessment of the drawings ref 03A and 04A, I find that the proposed extension to the NE side elevation would meet the requirements, limitations and conditions under Schedule 2, Part 1, Class A of the GPDO. Likewise, the proposed porch to the SW side elevation would meet the requirements, limitations and conditions within Schedule 2, Part 1, Class D. It follows, therefore, that those two elements of the proposal would be development permitted by the GPDO.
17. Accordingly, the appeal cannot succeed in respect of all of the proposed operations. Even so, as I am satisfied that, based on the available evidence, some of the proposed operations would be lawful, I intend to exercise the power under Section 193(4)(b) of the Act to make a split decision.

Appeal A - Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the construction of an extension to the NE and a porch to the SW elevations at 62 Chapel Hill, Holt Fen, Little Thetford, Cambridgeshire CB6 3HB was not well-founded and that the appeal should succeed in part.
19. However, the Council's refusal to grant an LDC in respect of the extension to the SE elevation and the outbuilding to the SE of the dwelling was well-founded and the appeal should fail in part.
20. I will exercise the powers transferred to me under sections 195(2) and 195(3) of the 1990 Act as amended.

Appeal B

21. Application 19/00712/CLP was made under s192 of the 1990 Act. This section indicates that if the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case the local planning authority shall refuse the application
22. The appeal is against the Council's decision to refuse the LDC and this is confirmed by the appellant in his statement. The LDC (18/00784/CLP) was submitted as a notification to the Council of the appellant's "intention to build an 8 metre extension under permitted development rights". Due to no determination being made "within the time framework", as set down by the permitted development statutory legislation, the appellant believed the "notification is deemed approved".
23. Unfortunately, the LDC application used to notify the Council of the intention to build an 8 metre extension under permitted development rights was the incorrect procedure. This is subject to the prior approval requirement for large household extensions. Prior approval is deemed to be granted where the

Council has not made a determination within the relevant period. While a large extension was part of the development, which was the subject of application 18/00784/CLP, it is clear however that that application was not an application for prior approval. Hence the only consequence of the failure of the Council to determine LDC application 18/00784/CLP within the relevant period was the right to appeal, which was not in any case exercised on that basis.

24. Nevertheless, prior approval is of no value whatsoever where the development concerned is not otherwise in accordance with the conditions and limitations of the relevant Class of the GPDO. The proposed 8m extension would not accord with Class A because it would extend beyond a wall which forms the principal elevation of the original dwellinghouse in breach of condition A.1.(e)(i), and as such it would not be a paragraph A.1(g) rear extension to which the paragraph A.4(2) prior approval procedure applies.

Appeal B – Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S Hanson

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 October 2018 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed extension to the northeast side elevation and the proposed porch to the southwest side elevation, as shown on drawings 01A (dated May 2018), 03A and 04A (amended scheme dated 28-9-18), meet the conditions and limitations of Class A and Class D respectively of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S Hanson

Inspector

Date: 24 July 2020

Reference: APP/V0510/X/19/3229181

First Schedule

Extension to the northeast side elevation and porch to the southwest side elevation

Second Schedule

Land at 62 Chapel Hill, Holt Fen, Little Thetford, Cambridgeshire CB6 3HB

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 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 site plan referred to in my decision dated: 24 July 2020

by S Hanson BA (Hons) BTP MRTPI

Land at: 62 Chapel Hill, Holt Fen, Little Thetford, Cambridgeshire CB6 3HB

Reference: APP/V0510/X/19/3229181

Scale: Not to scale

