
Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 12 October 2020

Appeal Ref: APP/J1915/X/20/3249498

45 Dovedale, Ware SG12 0XL

- 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 Miss Kate Branston against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/0251/CLPQ, dated 7 February 2020, was refused by notice dated 9 March 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The for which a certificate of lawful use or development is sought is:
Single storey rear extension: depth 4 metres, maximum height 4 metres, eaves height 2.5 metres.
-

Decision

1. The appeal is allowed and a lawful development certificate is attached below.

Matters of clarification

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial submissions, supplemented by additional information being supplied. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

Background information

3. The appeal property is a two storey, end of terrace dwelling which is located in the southern part of the cul-de-sac, Dovedale, to the north of Quincey Road . It lies within the built up area of Ware but is not within the Conservation Area
4. Planning permission was refused on 7 January 2020 (3/19/2476/PNHH) for a single storey rear extension: depth 4 metres, maximum height 4 metres, eaves height 2.5 metres. On 6 February 2020 the LPA determined that Prior Approval was not required for the single storey rear extension, depth 4 metres; maximum height 4 metres; height at the eaves 2.6 metres (3/20/0034/PNHH).
5. The application (3/20/0251/CLPO), the subject of this appeal, was then refused on 9 March 2020. Following the refusal a LDC was granted under application 3/20/0623/CLPQ for the single storey rear extension (depth 4 metres, height 4 metres, height at eaves 2.6 metres) in accordance with the details pursuant to the Prior Approval application (3/20/0034/PNHH).

Reasons

Introduction

6. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered.

7. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information, a LPA may be justified in refusing to grant a certificate. In this case relevant plans were submitted and these are set out in the Council's delegated report. The LDC application form referred in two places to the Prior Approval decision.

The gist of the case for the appellant

8. It is stated that this is a simple issue in that the Council's case officer had not looked at the submitted information and had missed the fact that Prior Approval had been deemed not to be required (see above). This was referred to on the application form and it is stated that another of the Council's officers has accepted that a refusal of the LDC application should not have been issued. This appeal was made in order to rectify the situation.

The gist of the case for the Council

9. The Council indicates that it did not consider that the proposed development under 3/20/0251/CLPO was permitted development as the proposal failed A.1.(f) of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). It is stated that the description of development did not include details of the extant Prior Approval application and, therefore, the depth of the proposed extension under 3/20/0251/CLPO did not fall within the scope of the LDC.

10. However, it is accepted that the refusal of the LDC application was issued incorrectly. The Council then states that *'the description provided by the agent, within part 5 of the application should have included reference to the extant Prior Approval Commission'*.

My assessment

11. The Council's comments, regarding the LDC application and part 5 of the application form, infer that no reference was made regarding the extant Prior Approval application and permission. However, I note that in section 5 (Grounds of application) of the application form (dated 7 February 2020), it is stated that *'Prior Approval was carried out and deemed not required on 6/2/20'*. Furthermore, in section 7 (Pre-Application Advice), reference is again made to the Prior Approval and the fact that it was not deemed to be required. It is difficult to reconcile the Council's statement with these facts. Nevertheless I must still consider whether the proposed development was lawful on the date of the LDC application.

12. The GPDO at paragraph A.4.(1) of Schedule 2, Part 1, Class A, sets out the conditions which apply to development permitted by Class A which exceeds the limit set out in paragraph A.1.(f) but which is allowed by paragraph A.1.(g). In this case A.1.(g) was relevant and the application details were in accordance with the conditions set out in A.4.(1). In particular all of the relevant required details set out in A.4.(2) had been complied with and there is no dispute that the Prior Approval application was valid.

13. The LPA did not refuse the application and no adjoining owner(s) objected to the proposal. On that basis condition A.4.(7) did not apply and the LPA confirmed that Prior Approval was not required (6/2/20).

14. Article 7 of the GPDO sets out the statutory time periods for which a LPA must comply for a Prior Approval application. But also, through Article 7 (and the relevant parts and paragraphs) an applicant can proceed with permitted development if a LPA does not make a determination; fails to make a determination within the statutory timescale or determines that Prior Approval is not required. In all such cases Prior Approval is deemed to have been granted.

15. Thus, if the LPA informed the appellant, on 6 February 2020, that Prior Approval was not required, then at the time of the application on 7 February 2020 the proposal as applied for was lawful for planning purposes. It follows that a LDC should have been issued. On that basis I do not consider that the Council's decision was sound. It follows that the appeal must succeed and a lawful development certificate is attached below.

Other Matters

16. In reaching my decision I have taken all other matters into account. But these do not alter the situation that a certificate should have been issued by the Council.

Formal Decision

17. The appeal is allowed and a lawful development certificate is attached .

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 7 February 2020 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 12 October 2020
Appeal Reference: APP/J1915/X/20/3249498

First Schedule

Single storey rear extension: depth 4 metres, maximum height 4 metres, eaves height 2.5 metres.

Second Schedule

45 Dovedale, Ware, Hertfordshire SG12 0XL

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted to the LPA with the LDC application (P100A; 101A; 102A and P201) on 6 February 2020.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.