



Appeal Decision

Site visit made on 15 September 2020

by Thomas Shields DipURP MA MRTPI

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

Decision date: 13 October 2020

Appeal Ref: APP/P0240/X/20/3253647

2 The Ride, Totternhoe, Dunstable, Bedfordshire, LU6 1RH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Christopher Ashley Emmer against the decision of the Central Bedfordshire Council.
 - The application Ref: CB/19/04295/LDCP, dated 22 December 2019, was refused by notice dated 2 April 2020.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is construction of detached garage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Procedural matters and background

2. It is for the appellant to demonstrate, on the balance of probabilities, that the development would be lawful. Matters such as planning policies and the effect of the proposed garage on the character and appearance of the area are not relevant.
3. At the time of my visit to the appeal site I saw the layout of the house, gardens and existing garage were located as shown as existing on the plans submitted with the LDC application to the Council. The proposed new garage to the rear would be constructed in addition to the one already on site. My decision is based on the submitted plans.

Main Issue

4. The main issue is whether the Council's decision not to issue an LDC was well founded. The Council acknowledge that the proposed garage would be for incidental use and would meet the size and other limitations within Class E(a), and Part 1 of Schedule 2 to the GPDO¹. Hence, they accept it would ordinarily fall to be considered as 'permitted development' (PD) and I have no reason to disagree.
5. The single point of dispute is whether a condition (C5) attached to an earlier planning permission² seeking to removing permitted development rights for

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² Ref: CB/19/03761/FULL granted 18.12.19 for single storey rear extension and demolition of existing garage

Class E buildings has any effect. The appellant's case is that it does not have any effect because the earlier planning permission has not been implemented.

Reasons

6. The rear single storey extension and demolition of the existing garage permitted under CB/19/03761/FULL had not commenced at the date of the LDC application, nor had it so at the time of my visit to the appeal site. Clearly therefore, the planning permission has not been implemented, and if not commenced beforehand will expire after 3 years on 18 December 2022.
7. The Council consider that C5, removing PD rights for Class E buildings, came into effect the moment the planning permission was granted. However, this is not the case. The appellant's development of his land is not controlled by the conditions attached to CB/19/03761/FULL unless and until he implements that planning permission. That the permission exists, by itself, does not prevent him from first implementing an alternative planning permission that was already available to him – i.e. that granted by the GPDO for Class E buildings. I am unaware of any Court judgments that would suggest otherwise and the Council have not referred to any.
8. While the appellant might find some difficulty in constructing the proposed garage, without first making alterations to the access and gap to the side of the existing garage, that is a matter for him to resolve. I see no reason why that would prevent the proposed development from being constructed lawfully under Class E.

Conclusion

9. 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 construction of detached garage at 2 The Ride, Totternhoe, Bedfordshire, LU6 1RH was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

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 18 December 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 proposed development would have benefitted from deemed planning permission pursuant to Article 3, and Class E(a) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

Inspector

Date 13 October 2020

Reference: APP/P0240/X/20/3253647

First Schedule

Construction of a detached garage.

Second Schedule

2 The Ride, Totternhoe, Dunstable, Bedfordshire, LU6 1RH

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 plan referred to in the Lawful Development Certificate dated: 13 October 2020

by Thomas Shields DipURP MA MRTPI

Land at: 2 The Ride, Totternhoe, Dunstable, Bedfordshire, LU6 1RH

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Do not Scale

