
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/N0410/X/20/3264444

46 Meadow Way, Dorney Reach, Maidenhead SL6 0DS

- 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 Peter Snowden against the decision of Buckinghamshire Council.
 - The application Ref PL/20/2436/SA, dated 29 July 2020, was refused by notice dated 27 October 2020.
 - The application was made under section 192(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 put in a drop kerb and driveway.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the submissions that development for which the LDC is sought is for a 'proposed vehicular access' as described by the Council in its decision notice. The Council dealt with the proposal on this basis and so shall I. This will not cause injustice to either side.
4. An LDC under s192 of the 1990 Act is not equivalent, in law, to a planning permission. Therefore, the appellant's submissions relating to no potential impact on the occupants of the upstairs flat do not fall to be considered. The decision will be based strictly upon the facts of the case and relevant planning law.

Main Issue

5. The main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

6. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development set out in Schedule 2 to that Order. This includes at Class F, Part 1, hard surfaces incidental to the enjoyment of a dwellinghouse, subject to various restrictions in size and location.
7. The Council submit that the proposed development would not comply with Class F because the appeal property is not a dwellinghouse. In addition, the Council contends that the proposed access does not fall within Class B of Part 2, Schedule 2 of the GPDO because the access is not required in connection with development permitted by any Class in Schedule 2.
8. The GPDO states that “a ‘dwellinghouse’ does not include a building containing one or more flats or a single flat contained within a building”. Having regard to the tenancy agreement provided by the appellant, the appeal property is a two-bedroom ground floor flat. Thus, the appeal property does not benefit from the permitted development rights afforded to a dwellinghouse by virtue of Class F, Part 1 of Schedule 2, Article 3 of the GPDO.
9. Moreover, Schedule 2, Part 2 of the GPDO sets out permitted development rights as they apply to ‘Minor operations’. Within Part 2, Class B permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or classified road, where that access is required in connection with development permitted by any Class in Schedule 2 (other than by Class A of this Part). As the proposed access is required in connection with development which is not permitted by the GPDO, it follows that Class B permitted development rights do not apply.
10. On the evidence available to me and having regard to all other matters raised, I find that, as a matter of fact and degree, it has not been shown that on the balance of probabilities the proposed development would be permitted development by virtue of the GPDO.

Conclusion

11. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the proposed development 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.

Elizabeth Jones

INSPECTOR