



Appeal Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/C3240/X/21/3275212

38 Warwick Way, Leegomery, Telford TF1 6JZ

- 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 Mrs Julia Lacey against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2021/0365, dated 7 April 2021, was refused by notice dated 12 May 2021.
 - 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 a single storey extension.
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Decision

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

Preliminary matters

2. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information to satisfy 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 application should be refused.
3. In an appeal under s195 of the 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 the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities. No site visit was made in this case as it was not necessary for me to inspect the property internally or externally in order to determine the appeal.

Main Issue

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

Reasons

5. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes at Part 1, Class A, the enlargement, improvement or other alteration of a dwellinghouse. This is

- subject to the limitations set out in paragraphs A.1. and A.2. and the conditions in paragraph A.3.
6. The appeal property is a two storey detached dwelling located on a corner plot within a residential area. The appellant considers that the principal (front) elevation is denoted by the garage and parking area. By taking this view, the appellant argues that the proposed extension would be to the rear of the property rather than the side and would comply with the limitations and conditions within Class A regarding the enlarged part of the dwellinghouse extending beyond the rear wall of the original dwellinghouse.
 7. The Council considers that it is a matter of debate whether the extension would project from the side or rear elevation of the property¹. Notwithstanding this, the Council's reason for refusal considers that the proposal would not be PD under Schedule 2, Part 1, Class A because the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse². The appeal statement expands the refusal reason by adding that whichever elevation the proposal would be attached to, it would not comply with the PD limitations because of the roof overhang. In either circumstance, it considers that the proposal would be caught by Class A.1 (e)(i) or (ii) because the proposal would extend beyond a wall that forms either a principal elevation or a side elevation that fronts a highway.
 8. Guidance produced by the Department for Communities and Local Government "Permitted development for householders, Technical guidance" September 2019 (the Technical Guidance) clarifies the term "principal elevation" to be, in most cases, *"that part of the house which fronts (directly or at an angle) the main highway 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"*.
 9. The guidance continues with the definition saying *"there will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation"*.
 10. From the information provided, I consider that the principal elevation, which contains the front door and displays the main architectural features of the property, faces northeast. Consequently, the proposal would represent an addition to the side of the dwellinghouse.
 11. Drawing 20-046-EPPE dated 29/03/2021 and forming part of the application for the LDC, shows that the proposed addition to the side of the house would be flush with the existing front elevation of the original dwellinghouse. Furthermore, the side elevation that would be extended does not front a highway. Accordingly, the proposal would not be subject to the limitations within Class A.1 (e)(i) and (ii) of the GPDO.
 12. Notwithstanding the above, the Council's interpretation of the "extending beyond a wall" refers to the roof overhang. In this case, the roof overhang is

¹ Council's statement of case dated 25 July 2021

² Schedule 2, Part 1, Class A.1 (e)(ii)

no more than is necessary and I consider it should be discounted for the purposes of applying Classes A.1(e)-(j), and also for A.1(ja), A.2(b)-(d) and A.4(2).

13. In addition to Class A.1(e), Class A.1(j) provides that development would not be permitted where the enlarged part of the dwellinghouse that would extend beyond a wall forming a side elevation of the original dwellinghouse and would:
(i) exceed 4 metres in height; (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse. Drawing 20-046-EPPE shows that the proposed extension would accord with the limitations contained within Class A.1(j).
14. From the information before me, the proposal would be classed as permitted development by virtue of Schedule 2, Part 1, Class A.1 of the GPDO.
Consequently, express planning permission would not be required.

Conclusion

15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC in respect of a proposed single storey extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A 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 7 April 2021 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 operations would have constituted permitted development within the terms of Article 3 and Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 subject to compliance with the conditions set out in paragraph A.3.

Signed

S A Hanson

INSPECTOR

Date: 12 October 2021

Reference: APP/C3240/X/21/3275212

First Schedule

Single storey extension as described in application reference, Ref TWC/2021/0365, dated 7 April 2021, and shown in the drawings submitted therewith.

Second Schedule

Land at: 38 Warwick Way, Leegomery, Telford TF1 6JZ

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 use /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, was /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 use /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: 12 October 2021

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Scale: Not to scale

