



Appeal Decision

Site Visit made on 28 September 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/C1950/X/21/3274514

34 Haseldine Meadows, Hatfield, AL10 8HB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Vasile Tanasa against the decision of Welwyn Hatfield Council.
 - The application ref 6/2021/0349/LAWP, dated 3 February 2021, was refused by notice dated 13 April 2021.
 - 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 new vehicle hardstanding for x2 cars.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant in an LDC case to make out their case to the standard of the balance of probabilities.
3. The proposed block plan which was submitted with the application for the LDC identified the site as the dwelling, its rear garden and its front garden which I observed during my site visit is bounded by a hedge. The land between the front hedge and the road was not included in the site but it was identified as the area on which the appellant wished to construct the vehicle hardstanding.
4. The appellant says that in response to a request from the Council he revised the site plan to include the proposed hardstanding and the pavement within the site. A copy of the revised site plan was attached to the LDC issued by the Council and is referred to as a refused drawing. As this was the plan upon which the Council made its decision, I will determine the appeal on the same basis.
5. The Council did not consider the relevance of whether or not the proposed development would be within the curtilage of 34 Haseldine Meadows (No. 34) in their determination of the application. As will be seen from my reasoning below, I regard this as a relevant matter. Consequently, I have given the

appellant the opportunity to make comments on this matter and he would not be prejudiced if I consider it in my determination of his appeal.

Main Issue

6. The main issue is whether the Council's decision to refuse the application for a Lawful Development Certificate (LDC) was well-founded.

Reasons

7. The appellant has set out on his application form that he considers that the operations which he proposes to carry out constitute permitted development under Class F – hard surfaces. He refers to the MHCLG (Permitted development rights for householders) Technical Guide. This guidance relating to hard surfaces derives from Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO).
8. Class F of the GDPO sets out that the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse is permitted development subject to conditions.
9. Given that the plans refer to the provision of a dropped kerb it is reasonable to regard the application for the certificate as including the means of access to a highway. Therefore, as the Council has done, it is appropriate to also consider whether the formation of a means of access to the hardstanding is permitted development. This is addressed by Class B of Part 2, Schedule 2 of the GDPO.
10. In order for the LDC to be granted the appellant must show, on the balance of probabilities, that the proposed development falls under Class F and Class B. This requires him to demonstrate that the development falls within the description of the development in Class F and Class B and that it meets any conditions of those classes.
11. Class F falls within Part 1 of Schedule 2 of the GDPO which deals specifically with development within the curtilage of a house. The appellant explains that the land on which the hardstanding is to be constructed, which he describes as common land, is currently owned by the Council. He says that he cannot purchase it until planning permission has been granted. He considers that on this basis, and because the Council encouraged him to include the common land in the application site, the proposed hardstanding would be within the curtilage of No. 34.
12. In itself the ownership of the land does not necessarily preclude it from being in the curtilage of the dwellinghouse. However, it is a relevant matter along with the physical layout of the house and the land said to be curtilage and the way the land is used. Furthermore, the question of whether the proposed works would be lawful falls to be considered on the circumstances as they were on the date of the application i.e., 3 February 2021.
13. At present the site of the hardstanding is not part of the layout of the house and its garden and I have no information to suggest that this situation was any different on the date that the application was made.
14. The site of the hardstanding forms part of a verge between the terrace of houses and the curving carriageway of Haseldine Meadows and is separated from the front garden of No. 34 by a hedge. The hedge is a common feature

along the front boundaries of the houses in the terrace and save for the footpaths which run across the verge serving the front doors there is no functional link between the verge and the dwellings. During my site visit I observed that the verge forms one of a series of open green areas on the housing estate which are part of the landscaping of the residential area.

15. Given the arrangement of the layout and the use of the verge, the site of the hardstanding does not currently fall within the curtilage of No. 34. Consequently, the hardstanding does not amount to 'the provision within the curtilage of a dwellinghouse of a hard surface'. As such the appellant has not demonstrated, on the balance of probabilities, that the hardstanding would be permitted development under Class F.
16. The formation of a means of access under Class B is conditional upon it being in connection with development permitted by any Class in Schedule 2 such as Class F. Therefore, given my determination in relation to Class F, the appellant is also unable to demonstrate that the construction of the means of access to the hardstanding is permitted development under Class B.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a new hardstanding for x2 cars at 34 Haseldine Meadows, Hatfield AL10 8HB was well-founded, albeit for a different reason, 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.

Sarah Dyer

Inspector