
Appeal Decision

Site visit made on 11 October 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2021

Appeal Ref: APP/Z4718/X/21/3277913

Five Miles, 330 Barnsley Road, Flockton, Huddersfield WF4 4AT

- 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 S Padgett against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2021/CL/91036/E, dated 18 February 2021, was refused by a notice dated 12 March 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 construction of a swimming pool building to the garden.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

3. The proposed development is a single storey detached building for a swimming pool on land at Five Miles, which is a detached dwelling. The provision within the curtilage of a dwellinghouse of any building or enclosure or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the restrictions set out in E.1, E.2 and E.3.

4. The Council refused to grant the certificate because they consider that the proposed building would not comply with Class E.1 (c) of the GPDO. They consider that the proposed building would be sited on land forward of a wall forming the south facing principal elevation of the original dwelling. It is the Appellant's case that the southern elevation is not the principal elevation for the purposes of this Class of the GPDO, and that the principal elevation of the dwelling is its northern elevation, which fronts towards the road.
5. E.1 subsection (c) of the GPDO states the following: *Development is not permitted by Class E if any part of the building..... would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.* The term "original dwellinghouse" is not defined explicitly in the GPDO. Article 2, "Interpretation", states that the term "original", in relation to a building, means as it existed on 1 July 1948 or, if built later, the building as so built.
6. Technical Guidance¹ states *"in most cases the principal elevation will be 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. 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."*
7. Five Miles is accessed via a driveway from Barnsley Road to the north and is the location from which the postcode is set. The dwelling is well related to the road with its north elevation fronting towards it at a slight angle and the driveway forming a courtyard with original outbuilding situated between the dwelling and Barnsley Road. The driveway has been extended around the east side of the house where a new garage block has been constructed. The front is south-facing and overlooks a terrace and large landscaped garden, with sweeping views of the open countryside.
8. The south-facing elevation has been extended in recent years with the addition of a sunroom. In addition, this elevation contains a timber framing gable detail and a ground floor bay window. The Council advise that prior to the construction of the sunroom, the south elevation contained the front door which had a stained-glass detail and provided access into the property's main hallway. Habitable rooms are located on the southern side of the property, taking account of the views and natural light and openings. The southern elevation is clearly aesthetically important, and in my view, the original orientation of the property was deliberately designed towards the south to take advantage of the views, extensive garden and natural sunlight.
9. Taking into account the drawings provided by the Appellant at Appendix C of his appeal submission, it is apparent that there have also been some alterations to the original north-facing elevation of the property. However, there appears to have always been an entrance door in this elevation serving the more functional rooms. The north-facing elevation faces the driveway,

¹ Permitted development rights for householders, Technical Guidance, dated September 2019, MHCLG.

outbuildings, as well as towards the road. Taking into account the layout of the drive, outbuildings and access from Barnsley Road, it seems to me that people would have generally entered the dwelling from the northern elevation. In addition, this elevation contains a projecting gable with a timber framing detail which gives this elevation a prominence when entering the property from Barnsley Road.

10. In comparing the southern and northern elevations of Five Miles, as a matter of fact and degree, I find that the latter is characterised as the principal elevation due to its functional design, the site layout and relationship to Barnsley Road. I accept that the significant architectural detail and design of the south façade is not apparent on the other elevations. However, I do not consider that it contained the main entrance to the original dwelling and for the reasons I have identified, it is not the principal elevation. It is important to note that the relevant parts of the Technical Guidance use the words "*usually*", as it clearly envisages exceptions such as that before me in this appeal.
11. Given that I have found that the north-facing elevation is the principal elevation of the original dwelling, it follows that the proposed swimming pool building in the position shown on the application plans would not be sited on land forward of a wall forming the principal elevation of the original dwellinghouse. Consequently, there would be no conflict with Class E.1 (c) of the GPDO.

Conclusion

12. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of a swimming pool building to the garden at Five Miles, 330 Barnsley Road, Flockton, Huddersfield WF4 4AT was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the 1990 Act as amended.

Elizabeth Pleasant

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 February 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed swimming pool building would be permitted under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 and therefore benefit from planning permission granted by Article 3 (1) of that Order.

Signed

Elizabeth Pleasant

INSPECTOR

Date 1 November 2021

Reference: APP/Z4718/X/21/3277913

First Schedule

Swimming pool building in garden (as shown on Drawing SP3/02, dated 15/02/21)

Second Schedule

Land at Five Miles, 330 Barnsley Road, Flockton, Huddersfield WF4 4AT

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: 1 November 2021

by Elizabeth Pleasant DipTP MRTPI

Land at: Five Miles, 330 Barnsley Road, Flockton, Huddersfield WF4 4AT

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Scale: Not to Scale

