
Appeal Decision

Site visit made on 5 January 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

Appeal Ref: APP/U4610/X/21/3285326
2 Ethelfield Road, Coventry CV2 4BW

- 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 B Desai against the decision of Coventry City Council.
- The application Ref LDCP/2021/2747, dated 3 September 2021, was refused by notice dated 14 October 2021.
- The application was made under section 192(1)(a) and 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 comprises both (a) a change of use from a dwellinghouse (Class C3) to use as a house in multiple occupation for up to six occupants (Class C4) and (b) to make roof alterations consisting of the conversion of a side hip roof to gable roof with rear box dormer loft conversion.

Summary Decision: the appeal is allowed in part and a certificate granted for that part, but is otherwise dismissed.

Preliminary Matters

1. Although the application was not validated by the Council for consideration until 30 September 2021, the application form is dated 3 September 2021 and thus I consider 3 September 2021 to be the relevant date for consideration of the appeal, notwithstanding the Council's reference to 30 September 2021 in their notice of refusal.
2. Since issuing the decision the subject of the present appeal, the Council have granted a certificate of proposed lawful use or development under reference LDCP/2021/3189 on 9 December 2021 ('the December 2021 certificate') with a relevant date of 22 October 2021. The proposed use or development certified as lawful consists of, as described in the First Schedule to that certificate, a 'Hip to gable roof conversion with rear box dormer window and change of use to HMO by not more than six residents'.
3. The content of the operative part of the certificate is at some variance with the reasons given, which appear to opine that the proposed operational development element of the proposal would not be lawful. I express no view on the overall effect of the certificate granted, but note that the relevant date I am asked to consider here pre-dates the relevant date of the December 2021 certificate, meaning that nothing certified as lawful in that December 2021 certificate can give rise to any conclusive presumption relevant to the present appeal.

4. The plans before the Council for consideration at the time of the December 2021 certificate differ from those submitted in respect of the present appeal when the application was made. The December 2021 certificate resulted from consideration of drawing no. 2ER-A0-001 Rev A. Although that drawing appears to have been placed before the Council shortly before they determined the present application, the Council considered and determined the application in relation to the original drawing, no. 2ER-A0-001 (with no revision number).
5. I therefore need to decide which of the two plans are before me for consideration in this appeal.
6. A certificate issued under s192 should be worded with precision, and it follows that precision is required on any application. There is no equivalent power to that set out under s191(4) for the Council to modify the terms of a s192 application. The Council's practice is not to accept amendments to such applications once made. It is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of and to describe this correctly when applying.
7. In some cases, the Council and appellant may have agreed a modified description or plans and the appeal has gone forward on that basis. Whilst I do not consider that the Council have agreed to the appeal going forward on the basis of the 'Rev A' plan, I need to consider whether my acceptance of that plan, as I am asked to do by the appellant, would prejudice any party to the proceedings or have implications for any interested third parties.
8. Here, the Council have supplied me with a copy of the December 2021 certificate and the officer's report accompanying it. I have received representations from third parties which appear to relate to the original plans, although the general flavour of those representations is primarily to object to the HMO aspect of the proposal. The operational development aspect is reduced in size by the 'Rev A' plan from the original, and so I consider it would be unlikely to raise any additional objections. In the circumstances I consider that I am able to consider the 'Rev A' plan without prejudice to the interests of the Council or anyone else. Accordingly, that is the plan that forms the basis of my consideration of this appeal.
9. As to the description of the proposed change of use, although the original application form referred to Class C4 it did not expressly specify a restriction on the number of occupants to six. The Council's notice of refusal has refined the description to include this restriction, and I shall consider the proposal on that basis.

Main Issues

10. The main issues in the appeal are whether the two elements of the application would have been lawful if carried out on the date of the application. There appears no dispute that each element amounts to development requiring planning permission for the purposes of Part III of the 1990 Act. However, the issue is whether such planning permission has been granted for each element by reason of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order'). The Order confers a general permission for certain material changes of use and for certain types of operational development including by householders.

11. Although there is reference by the Council to the property having been marketed for rent as a number of studio apartments in October 2021, it is not disputed that the property remained in a Class C3 use at the relevant date. There is no dispute between the parties that the 'use' element of the proposal benefits from permitted development rights. Nonetheless the Council refused the application as a whole, perhaps because they were under the misapprehension that they cannot grant a certificate 'in part' (as set out at paragraph 2.2 of the Council's appeal statement, pre-penultimate bullet). The possibility of such an outcome is envisaged by section 193(4) of the 1990 Act.
12. The remaining ground of dispute is whether the proposed roof works are permitted by Article 3 and Class B of Schedule 2, Part 1 of the Order. It is not disputed that the permissions conferred by the Order apply to dwellinghouses in Class C4 (as well as Class C3) uses.

Reasons

13. The Council point out in their officer report on the December 2021 certificate that there are some discrepancies in the plans, in particular with the elevational drawings not matching the floor plans, but in any event the Council have calculated the total volumetric extensions to the roof to be of the order of 67 cubic metres. This considerably exceeds the permitted tolerance of 50 cubic metres when assessing by how much the resulting roof space would exceed the original roof space in the case (Class B(d)) of a dwellinghouse that is not a terrace house.
14. It is for the appellant to prove their case on an application or appeal of this type, to the standard of probability. Nothing the appellant has put before me sufficiently persuades me that the Council's calculations are incorrect. Therefore I do not find that the appellant has made out his case or, therefore, that the proposed operational development would have been lawful if carried out on the relevant date.
15. Having visited the site I agree with the Council, for the reasons they give, that the principal elevation of the property faces Brays Lane, notwithstanding the postal address and location of the 'front' door to the property on Ethelfield Road. Therefore I do not consider that the works would be precluded by paragraph (c) of Class B. This is however insufficient to overcome the preclusion by reason of paragraph (d) as all criteria must be met in order to benefit from the permission conferred by the Order.
16. Section 195(2) of the 1990 Act provides that (as relevant) if and so far as the Secretary of State is satisfied that the authority's refusal of a s192 application is not well-founded, a certificate shall be granted to the appellant. Section 195(3) provides that if and so far as the Secretary of State is satisfied that the authority's refusal is well-founded, the appeal shall be dismissed.
17. Therefore, because I find the proposed change of use to be lawful but the proposed operational development not to be, at the relevant date, I shall both grant a certificate and dismiss the remainder of the appeal. I find that the Council's refusal to grant a certificate relating to the proposed change of use was not well-founded. I find that its refusal to grant a certificate relating to the proposed operational development was well-founded.

Conclusions and Formal Decision

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed roof alterations consisting of a hip to gable roof conversion with rear box dormer window was well-founded and that the appeal should fail in that regard. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
19. The appeal is dismissed insofar as it relates to proposed roof alterations consisting of a hip to gable roof conversion with rear box dormer window.
20. For the reasons given above I also conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed change of use from Class C3 house to Class C4 house in multiple occupation by up to six occupants was not well-founded and that the appeal should succeed in that regard. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
21. The appeal, insofar as it relates to a proposed change of use from Class C3 house to Class C4 house in multiple occupation by up to six occupants, is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Laura Renaudon

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 3 September 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Permission for the change of use was conferred by article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon
Inspector

Date: 26 January 2022
Reference: APP/U4610/X/21/3285326

First Schedule

Change of use from Class C3 house to Class C4 house in multiple occupation by up to six occupants.

Second Schedule

Land at 2 Ethelfield Road, Coventry CV2 4BW

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. 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.