



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/D1835/X/21/3271327

200A Bilford Road, Worcester, WR3 8HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
 - The appeal is made by Ms W Heath against Worcester City Council.
 - The application ref 20/00879/CLPU is dated 17 November 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is for the proposed siting of a cabin unit within the domestic curtilage to provide ancillary accommodation.
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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 found to be lawful.

Applications for costs

2. An application for costs was made by Ms W Heath against Worcester City Council. This application is the subject of a separate Decision.

Preliminary matters

3. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers¹.

Reasons

4. The certificate seeks to establish whether the siting of a cabin unit within the domestic curtilage to provide ancillary accommodation would be lawful. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The applicant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
5. The appeal is against the failure of the Council to give notice of its decision within the prescribed period, which has resulted in a deemed refusal. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's deemed refusal to issue an LDC was well-founded or not.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

6. The Council has indicated that if it had been able to determine the application, it would have granted the certificate. Thus, there is no dispute between the parties that the development would be lawful. On the basis of the evidence before me, I have no reason to differ from the view that the siting of a cabin unit within the domestic curtilage to provide ancillary accommodation would not involve a material change of use of land and thus not amount to "development" within the meaning of section 55(1) of the 1990 Act.

Conclusion

7. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development 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 17 November 2020 the use 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 siting of the cabin unit within the domestic curtilage to provide ancillary accommodation within land at 200A Bilford Road, Worcester WR3 8HL, as described in the statement accompanying the application, would be part and parcel of the residential use, within the same planning unit and would not constitute development requiring planning permission.

Signed

S A Hanson

Inspector

Date: 14 February 2022

Reference: APP/D1835/X/21/3271327

First Schedule

Siting of a cabin unit within the domestic curtilage to provide ancillary accommodation.

Second Schedule

Land at 200A Bilford Road, Worcester WR3 8HL

IMPORTANT NOTES – SEE OVER

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 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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 14 February 2022

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Scale: Not to Scale

