



Appeal Decision

Site visit made on 19 January 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/W3330/X/21/3284067

Tithe House, Thurlbear Road, Orchard Portman, Taunton, TA3 5BW

- 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 Dr A Lowe against the decision of Somerset West and Taunton Council.
 - The application ref 28/21/0005/LP, dated 18 June 2021, was refused by notice dated 11 August 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 described as "the proposal allows for the construction of a new single storey extension to the side of Tithe House. Details of the proposed extension can be seen on the submitted drawings."
-

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.

Preliminary Matters

2. I am obliged to use the description of the proposal as set out on the application form. The Council simplified the description on their decision to "Proposed erection of a single storey extension to the side of Tithe House, Thurlbear". The Council also, by use of an asterisk, referred in their amended description to the merits of the case which is unnecessary as it goes further than describing the proposed act of development and goes on to include part of the reasoning for the decision. It is not clear whether the change in description was agreed but is not disputed. I have therefore used it in my decision, with the omission of those words referenced by the asterisk and "side" which is inaccurate.
3. I undertook an unaccompanied visit to the site after pre-arranging with the Council and the appellant that this would be acceptable. The appellant had enabled access by keeping gates open and unlocked. They were not present.

Main Issue

4. I am required to determine whether the Council's decision to refuse the application was well founded. The Council considered that the proposed extension would not be 'permitted development' under the provisions of Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). The onus is upon the appellant to demonstrate, on the balance of probabilities, that the

development would be lawful. This is a matter of law rather than planning merits.

Reasons

5. The appeal site includes a large, detached traditional dwelling set within spacious grounds. It is located along Thurlbear Road which runs from north to south past the site. There are fields and a school to the north of the property and the large village church, to the south. It is proposed to build a single-storey extension on the southern elevation of the dwellinghouse.
6. The Council considers that the enlarged part of the dwellinghouse would extend beyond a wall that forms the 'principal elevation' of the original dwellinghouse. If that is the case, the development would be excluded from the permitted development rights deemed by Part 1, Class A of the GPDO, by reason of paragraph A.1. of that class. The Council's analysis of the proposal is very limited but the decision and the officer report that I have been provided with do not dispute that in other respects, the development would not exceed any other limitations of Class A.
7. The appellant accepts that through the history of the building, the 'front' and 'rear' of the property may have in the past been considered differently. In 1996, the appellant refers specifically to a planning permission. At that time their view is the northern elevation may have been the rear of the property. The GPDO does not specify any particular date upon which an assessment of these matters should be made and so in my view it is reasonable to consider what is the principal elevation as at the date of the application.
8. The document 'Permitted development rights for householders Technical Guidance' (the Guidance) has been referred to me. This advises that the principal elevation in most cases:

"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."
9. I have no reason to consider this case differently from this general advice within the Guidance. I will therefore make my judgement bearing this in mind and based upon the layout of the property as it stood when I visited which appears to be as it was when the application was submitted.
10. When approaching from the north, the boundary of the appeal site along Thurlbear Road is defined by a hedge and trees behind a post and rail fence. It is possible to view into the garden on this side of the dwelling. The gate into the driveway of the property has a splayed entrance allowing further views into the gravelled turning area when the gate is open, as it was at the time of my visit. This presents a clear point where people can gain access to the property even if they are not familiar with it. People arriving in cars would need to arrive by this entrance and park on the large, gravelled area. The gravelled area also leads to a door in the house underneath a canopy which in my opinion is an obvious front door for visitors to approach by.

11. By contrast, there is a more robust wall to the south of the dwelling along the western boundary with Thurlbear Road. This provides a higher degree of screening from the road of the garden to the south of Tithe House. A side pedestrian gate within the wall provides a potential pedestrian access from the road, although a sign was displayed directing visitors towards the entrance to the north. I noticed that this gate was also screwed shut from the garden side.
12. There is also a high stone wall running along the eastern boundary of the southern part of the garden. A tennis court takes up a lot of space towards the end of this part of the garden, with a boundary wall and hedge beyond that, adjoining the grounds of the church. This part of the garden is therefore substantially enclosed and secluded. There are iron gates on either side of the dwelling adding to the sense of this being a private part of the property.
13. The area to the south of the dwelling is private, being enclosed by substantial stone walls. A patio is laid out immediately to the rear where the occupants of the dwelling can sit out without being overlooked from Thurlbear Road. Even though there is a porch and bay windows on this side of the dwelling, those features do not in my view override the other elements of the layout that make the land on the southern side of the dwelling, subordinate and less accessible than that to the north.
14. I therefore consider that the front elevation of the dwelling which is most clearly seen from the main highway serving the house is that on the northern side. That in my view is therefore the principal elevation of the dwellinghouse. The extension is not proposed on the principal elevation and is on the rear, southern elevation. I am unsure why the appellant within the application description referred to "side" elevation but that does not affect my decision.

Other Matters

15. I have been provided with documentation including emails from the Council. In one of the emails, they refer to estate agent's particulars. I have not been provided with those particulars or the consultation with the Council's Conservation Officer who, according to the emails, also gave a view about what would be the principal elevation of the property. However, I have reached my own view from what I saw and the layout of the property as it is now.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed erection of a 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.

Andy Harwood

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 June 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 proposal would be 'permitted development' under the provisions of Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

Signed

Andy Harwood

Inspector

Date: 15 February 2022

Reference: APP/W3330/X/21/3284067

First Schedule

The proposed erection of a single storey extension

Second Schedule

Land at Tithe House, Thurlbear Road, Orchard Portman, Taunton, TA3 5BW

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 /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: 15 February 2022

by Andy Harwood CMS MSc MRTPI

Land at: Tithe House, Thurlbear Road, Orchard Portman, Taunton, TA3 5BW

Reference: APP/W3330/X/21/3284067

Scale: Not to Scale

