



Appeal Decision

Site visit made on 15 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2022

Appeal Ref: APP/K0235/X/21/3275579

7 Crofton Close, Bedford MK41 8AJ

- 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 Tha Han against the decision of Bedford Borough Council.
 - The application ref 20/02602/LDE, dated 8 November 2020, was refused by undated letter from the Chief Officer Legal & Democratic Services, Bedford Borough Council.
 - The application was made under section 191(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 use as a dwellinghouse.
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has applied for costs, which is the subject of a separate decision.

Preliminary Matters

3. The appellant indicated on his application form that he was seeking a certificate for an existing use as a dwellinghouse.
4. The Council did not issue a certificate and it states in its decision letter that the letter constitutes a notice of refusal. The application was refused because the appellant did not demonstrate that any development was lawful and particular mention is made of the installation of air conditioning units (AC units). An application for an LDC and by extension a decision must relate to a specific use, operation, or breach of condition. In this case, whilst the application form refers to a use, the evidence before me relates specifically to the installation of two AC units. It is clear from the appellant's case that this is what he is seeking a certificate for. I shall determine the appeal on that basis.
5. The Council's decision letter is undated, but the delegated report is dated 4 February 2021 and the appellant has referred to the same date on his Appeal Form. As there is no dispute between the parties, I shall regard the decision as having been made on 4 February 2021.
6. The appellant has provided a copy of an email exchange between himself and the Council regarding the certificate. This shows that the Council advised the appellant of its decision to grant the certificate before issuing its decision to refuse the application. He argues that the Council did not follow the necessary process to revoke a certificate and that the original decision to grant a

certificate remains binding. However, the appellant has submitted his appeal against the Council's decision dated 4 February 2021.

7. I have considered the appellant's appeal in this decision and dealt with matters arising from the processing of the application and the issue of a Certificate in my Costs Decision.
8. For the avoidance of doubt, the planning merits of the existing 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, as amended (the Act), which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
9. It follows that although the appellant provides cogent reasons for the installation of the AC units, these do not fall to be considered in my determination of the appeal.
10. I observed during my site visit that a third AC unit has been erected on the side of the house facing 9 Crofton Close. However, the appellant only refers to two AC units in his statement, those being on the side of the house facing 5 Crofton Close (No. 5). I have determined the appeal on the basis that it relates to the two AC units identified by the appellant in his submissions.
11. The appellant considers that the Council should have identified a conflict of interest because the daughter of the occupier of No. 5 who has made representations on the appeal worked for the Council. The Council has been contacted for comments on this issue and on an additional photograph which he says shows equipment in front of the gate at No. 5. In response the Council said it is not aware of who the appellant is referring to. A further comment from the appellant states that the person works in the Environment, Communities and Planning department.
12. In this case any conflict of interest which may arise in the determination of the application is a matter between the Council and the appellant. I have received comments from the occupiers of No. 5 and will take these into account in so far as they are relevant to the appeal.
13. In respect of the photograph, this information was submitted after I had carried out my site visit. However, the presence of similar features in the area relates to the merits of the development which is not a matter which is before me.

Main Issue

14. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

15. The appellant contends that the AC units are not development within the meaning of section 55 of the Act. If I do not find this to be the case, then the appellant argues that the AC units are permitted development.

Are the AC units development?

16. The appellant firstly seeks to establish that the installation of AC units is not a building operation which is defined for the purposes of the Act in s55(1A). He argues that the AC units are not an integral part of the building and that their installation was not carried out by a builder. However, notwithstanding whether AC units which are linked to the house and provide cooling for inside space constitute an integral part of the building or there is a difference between works carried out by a builder or by an engineer, the definition in s55(1A) is not an exhaustive list.
17. The Council refers to three appeal decisions, which relate to AC units. The Inspector who dealt with an AC unit at 31 Hamilton Terrace, London¹ concluded that the installation by a professional builder was not a pre-requisite for the development to constitute an operation of development under s55(1A). In the 7 Montpellier Terrace and the Wokingham Smiles, 3 Old Row Court, Rose Street, Wokingham appeal decisions², the Inspectors did not need to specifically address the question of whether the AC units were operational development or not. However, in going on to consider whether the AC units materially altered the external appearance of the building, it follows that both Inspectors took the view that they were.
18. The appellant questions the relevance of the appeal decisions provided by the Council. Looking at the appeal decisions in detail, the Inspector dealing with 31 Hamilton Terrace allowed the appeal, but this was because in his view the replacement AC unit did not result in a material change to the external appearance of the building. Both of the other appeals which were referred to were dismissed on the basis that the AC units in those cases would have a material effect. Thus, the determination of the appeals does not undermine the Council's argument that they show that AC units have been regarded as a building operation.
19. The appellant says that the outcomes of the appeals referred to by the Council, do not mean that all building operations require planning permission. That is the case, but of itself this does not support the appellant's argument that the installation of AC units is not a building operation. The appellant has not provided any relevant case law or appeal decisions in support of this contention.
20. Drawing all of these points together I do not find that it has been shown that the works which have been carried out do not amount to a building operation.
21. Turning to the question of whether as building operations the installation of AC units amounts to development, s55 of the Act establishes that development includes operations on land and land is defined in Section 336(1) of the Act as 'any corporeal hereditament including a building'. Section 55 goes on to exclude from the meaning of development alterations to a building which do not materially affect the external appearance of the building.
22. The Burroughs Day judgement³ further establishes that for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.

¹ Appeal Ref. APP/X5990/X/18/3206260

² Appeal Ref. APP/X5990/X/19/3237594 and Appeal Ref. APP/X0360/X/21/3269645

³ Burroughs Day v Bristol CC [1996] EGCS 126

23. The appellant has provided photographs of the AC units in situ. They sit one above the other on the side of the house. The units and the ducting which links them to the building are coated in a material which seeks to mimic the brown brickwork of the house to which they are attached. However, from some angles it is out of sync with the layout of the brickwork on the side of the house.
24. The AC units are also clearly visible from the rear garden serving the house and in the context of the rear elevation. Combined with the projecting nature of the units on supporting brackets, the appearance of the fans inside the unit and the ducting the AC units have a material effect on the external appearance of the building.
25. There is a fence and high level planting along the adjacent boundary with No. 5. I observed during the site visit that there are large bay windows in the side elevation of No. 5 facing the appeal site but that the AC units would be likely to be screened from view by the boundary treatment.
26. The windows in No. 5 may not provide a vantage point from which the AC units can be readily seen. However, the upper unit and the ducting are visible from the street adjacent to the driveway serving the garage at No. 5 and from the opposite side of Crofton Close when facing the appeal site. Thus at least parts of the units are visible from a number of vantage points.
27. The appellant refers to an appeal decision relating to Rose Cottage, Crayke, York⁴ (Appeal Ref. APP/G2713/X/14/2221238) (the Rose Cottage appeal decision) in support of his appeal. However, in that case the development concerned the installation of fans in an agricultural barn and the Inspector found that the lower parts of the building, including the fans, were obscured by buildings and an earth bund. Thus, the development in that case is not directly comparable to the current appeal scheme. In the circumstances the Rose Cottage appeal decision does not lead me to the same conclusion as the Inspector reached in that case.
28. For the reasons set out above, I find that the AC units constitute development.

Are the AC units permitted development?

29. The appellant contends that the installation of the AC units is permitted development under Part 1, Class A of the Town and Country Planning (General Permitted Development) Order (GDPO) (Part 1 Class A) because it constitutes an alteration or improvement to a dwelling.
30. Contrary to the view of the appellant I do not regard the Council's position as seeking to establish that the AC units could fall under Part 14 Class G of the GDPO (Class 14 Part G) and the appellant states that he does not wish to claim permitted development rights under Part 14 Class G. The Council argues that the AC units are akin to air source heat pumps and that the introduction of Part 14 Class G demonstrates that such features were not already permitted development under Part 1 Class A. I consider that there is logic in the Council's argument.
31. Even if I had reached the view that the AC units fall to be considered under Part 1 Class A, the appellants assessment of the development against the criteria within Part 1 Class A is flawed.

⁴ Appeal Ref. APP/G2713/X/14/2221238

32. The appellant regards the AC units as being of a 'similar appearance' to the dwelling and he references the advice contained in the Permitted development rights for householders Technical Guidance. Although the guidance states that the proposed materials do not have to be the same as existing materials, the examples given refer to similar shape, colour, and style.
33. The materials used for the exterior of the AC units are not of a similar appearance to those used in the construction of the exterior of the dwelling. The AC units are solid forms supported on brackets, their shape and style are considerably larger than the bricks which form the side elevation. Although the units are covered with a material which resembles brick work, the fans are visible and cannot be described as of a similar shape and style to the side elevation of the dwelling.
34. Even if the coating material on the outside of the units resulted in them being completely obscured, which is not possible given the position of the fans, the material from which the AC units are constructed is itself not similar to the brickwork of the side elevation of the dwelling.
35. Drawing all of these strands together, on the basis of the evidence, the appellant has not shown that the AC units constitute 'permitted development'. Therefore, planning permission was required for their installation.

Conclusion

36. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of air conditioning units was well-founded 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