



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2022

Appeal Ref: APP/K1128/X/21/3289504

Plot 29, Highfield, Eddystone Road, Thurlestone, TQ7 3NU

- 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 Mr Nick Teague against the decision of South Hams District Council.
 - The application ref 0612/21/CLP, dated 18 February 2021, was refused by notice dated 10 November 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 the proposed use of existing garage as temporary accommodation: C3 – dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the appeal depends on the submissions of the parties in respect of matters of law, it was unnecessary to carry out a site visit.

The site and relevant planning history

3. Plot 29 comprises an existing detached garage within an otherwise vacant residential plot. It was originally part of Highfield which has previously been divided into Plots 24 and 29.
4. In 2016 outline consent with all matters reserved was issued for the demolition of an existing dwelling, including the garage, subdivision of the plot and the erection of two dwellings (3203/16/OPA). There have been subsequent associated applications including reserved matters 3632/19/ARM for the construction of one of the dwellings and also non-material amendment applications.

Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

6. The appellant considers that the proposed occupation of the existing garage as temporary accommodation in connection with, and for the duration of operation relating to permission 3632/19/ARM is permitted development under Schedule 2, Part 4, Class A of the Town and Country Planning (General

Permitted Development) (England) Order 2015, as amended (GPDO). It is stated that permission 3632/19/ARM comprises an extant permission which has been implemented by the appellant. The intention is to occupy the garage for a temporary period in connection with and during the construction phase of the extent permission, allowing the appellant to project manage the development and to assist and advise contractors where necessary.

7. In order to make the garage habitable, modifications are proposed with existing windows and doors replaced, any gaps left from the garage doors filled with timber boarding, and internally, a kitchenette, lounge/dining room, bedroom and shower would be added. The Council advises that these works have been undertaken prior to the determination of the application for the LDC.
8. In respect of the proposed works, the appellant considers none of these represent development as defined in s55 and are more akin to 'the maintenance, improvement or other alteration of any building' which is not operational development. In other circumstances the appellant may be correct but in this case, the works have been proposed specifically to make the garage habitable and are therefore part and parcel of a material change of use of the garage to a dwellinghouse, which comprises development under s55. Whilst the garage may have been incidental to the use of the original dwellinghouse known as Highfield and in the same planning unit, it is now proposed that its primary use would be as a dwellinghouse, albeit for a temporary period, in a separate and distinguishable planning unit.
9. The appellant further considers that by virtue of the extant permission comprising a dwelling house and its curtilage, with the garage sitting in this planning unit, the garage benefits from householder permitted development rights by virtue of Part 1, Class A and Class E.
10. The quoted provisions of the GPDO provide for permitted development rights for a dwellinghouse. However, there is no dwellinghouse existing on the site as it has not yet been built. Permitted development rights under Part 1, Class A and Class E cannot therefore apply. An extant permission does not confer permitted development rights – it is planning permission for the development applied for. Whether the implementation of the permission has commenced is also not significant as for the benefit of permitted development rights under Part 1 to apply, there must be a dwellinghouse in existence.
11. The appellant refers to Part 4, Class A of the GPDO which permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out. However, development is not permitted by Class A.1(b) if planning permission is required for those operations but is not granted or deemed to be granted.
12. Although permission exists for the development of a dwellinghouse, the operations referred to by Class A.1(b) also include the demolition of the garage but the appellant is now seeking to enlarge the scope of the operations to incorporate the alterations to and material change of use of the garage, albeit temporarily, which do not benefit from any planning permission or deemed permission. As such the operations to the garage are unlawful.

13. It is questionable whether the 'provision' of buildings includes the 'use' of buildings already on site as 'provision' implies the introduction to the land of a building or buildings that were not present prior to the start of a development.
14. The appellant refers to a s106 planning obligation dated 13 August 2020 in respect of the non-material amendment applications to 3632/19/ARM. The appellant has suggested that this could be varied to satisfy any concerns of the Council that only a single dwelling would remain on the site as a result of the LDC. This was rejected by the Council who correctly advised that the LDC application was a means of establishing whether the proposed development required planning permission.
15. The appellant has not shown on the balance of probability that the permitted development rights under Schedule 2, Part 1, Class A and Class E; and Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, apply in this case.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed use of existing garage as temporary accommodation: C3 – dwellinghouse, 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

P N Jarratt

INSPECTOR