



Appeal Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Appeal Ref: APP/J3720/X/21/3289277

Nolands Farm, Oxhill, Warwick CV35 0RJ

- 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 D Connolly against the decision of Stratford-on-Avon District Council.
 - The application ref 21/02814/LDP, dated 2 September 2021, was refused by notice dated 21 October 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which an LDC is sought is described as single storey extensions.
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Decision

1. The appeal is allowed and attached to this decision is an LDC certificate describing the proposed operations which are found to be lawful.

Preliminary Matters

2. 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.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
5. From the council's appeal submissions, I acknowledge that it considered the proposed porch would be lawful. From the evidence before me I concur and as such, my decision will refer only to the proposed side extension.

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.

Main Issue

6. This is whether the decision not to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

7. The appeal property is a single storey former stable block, which has been converted to residential accommodation. It sits within a complex which includes the original farmhouse and other agricultural buildings, some of which have also been converted to residential. The appeal property and surrounding buildings are all within the appellant's control except for one residential property which is in separate ownership. This was indicated on the appellant's submissions in plan form and in an aerial capture format from Google Earth Images. The appeal site and surrounding buildings are set back from the road and are accessed via a single driveway.
8. The council consider that whilst the access may be used as a 'driveway', the land is also used to access the parking area to the rear of Nolands Farmhouse. It is regarded that the driveway is shared and is therefore a 'private way' which falls within the definition of a highway and that this land is immediately adjacent to the proposed extension. Consequently, it is the council's view that as the proposed enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation the development would not be permitted by Class A.1(e) of the GPDO. There is no disagreement that in all other respects Class A is met and I have no reason to conclude otherwise.
9. The appellant argues that the access historically served Nolands Farm only, all the properties excluding a converted barn/former B&B property remain within the ownership of the appellant, as does the driveway. The owner of the separate property has a right of access and with nothing beyond Nolands Farm, the driveway functions solely and appears visually as a 'private driveway', not a 'private way'.
10. While the GPDO does not define the term 'highway', it does at Article 2 of the GPDO interpret 'private way' to mean 'a highway not maintainable at the public expense and any other way than a highway'. Furthermore, the Technical Guidance published by the Ministry of Housing, Communities and Local Government (2019) to accompany the GPDO and assist in interpreting householder permitted development rights, includes a brief definition of a highway. Here it is stated that "a highway is a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order it also includes unadopted streets or private ways."
11. The clear inference to be drawn from this definition is that 'highway' means 'public highway', a route as defined in common law as one over which the public at large can pass and repass as frequently as they wish without hindrance and without charge. A privately-owned or privately-maintained way can be a highway, but only if the public at large can use it as of right.
12. There is one access point with the public highway where the driveway provides access into and out of Nolands Farm and provides a right of way for a property within the ownership of a third party. With nothing beyond the land holding

known as Nolands Farm, members of the public do not have an inalienable right to access the driveway because it is private land owned by the appellant. The driveway has not been adopted as a highway maintainable at the public expense and the title is vested with the appellants. Members of the public do not have a right to pass or re-pass and would only enter the driveway if specifically visiting. The driveway does not constitute a highway and therefore the proposed side extension would be classed as permitted development by virtue of Schedule 2, Part 1, Class A.1 of the GPDO. Consequently, express planning permission would not be required.

Other Matters

13. The council refer to an appeal decision² where an Inspector determined that, as there was no definition in legislation of a 'private driveway', for the purposes of that appeal, they accorded it a "common sense meaning as a private road for vehicles that connects a house or garage to the highway." The appellant has provided the decision letter and a site plan which shows the relationship between the appeal property and the highway. Here, the highway is a named 'private' road and clearly provides access to several individual properties which sit in a linear form. The circumstances of the example provided by the council are not comparable with the appeal before me.

Conclusion

14. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC in respect of the proposed single storey extensions 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

² APP/J1535/X/15/3131971 and APP/J1535/X/15/3131616

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 2 September 2021 the operations 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 operations would have constituted permitted development within the terms of Article 3 and Class A and Class D of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 subject to compliance with the conditions set out in paragraph A.3.

Signed

S A Hanson
INSPECTOR

Date: 28 April 2022

Reference: APP/J3720/X/21/3289277

First Schedule

Single storey extensions as shown on drawing 2036_PO1 dated January 2021

Second Schedule

Land at: Nolands Farm, Oxhill, Warwick CV35 0RJ

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 28 April 2022

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Scale: Not to scale

