



Appeal Decision

Site visit made on 13 May 2022

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/K1128/X/22/3291595

Vipers Quay, Dittisham, Dartmouth, Devon TQ6 0HE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Helena Vinnicombe against the decision of South Hams District Council.
 - The application ref 4146/21/CLP, dated 3 November 2021, was refused by notice dated 14 January 2022.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is repairs to jetty at Vipers Quay.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed operation which is found to be lawful.

Preliminary matters

2. I saw at my site visit that some work to the jetty has already been carried out. For the avoidance of doubt, my decision on this appeal concerns the proposed works detailed in the LDC application and accompanying plans and drawings, as amended (during the course of the application) by the deletion of the element of the original scheme which involved removing and replacing the stairs on the eastern side of the jetty.

Main issue

3. The uncontested evidence of the Appellant is that over the years, tidal erosion has damaged the fabric of the jetty, and works are now needed to remedy that damage. The dispute between the parties, and the main issue for this appeal, is whether or not the proposed works amount to "development", such as would require an express grant of planning permission.

The relevant legislation

4. S.55(1) of the 1990 Act defines development as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." S.55(2) then itemises a number of operations, and uses of land, which shall not be taken to involve development. These include "the carrying out for the maintenance, improvement or other alteration of any building of works which ... do not materially affect the external appearance of the building". S.336 provides that for the purposes of the 1990 Act, the term "building" includes any structure or erection, and any part of a building as so defined.

Analysis

5. The dividing line between works which constitute alteration or repair, and works which constitute rebuilding, is not always readily apparent. The former may be extensive, and effecting a change to the appearance of the building is not in itself sufficient to take such works outside the scope of the exemption from development: the test is whether or not they materially affect the external appearance of the building as a whole. But the exemption falls short of conferring unlimited rights to rebuild or remodel dilapidated buildings. In each case, it is necessary to consider the specific details of the works proposed.
6. In this case, the note submitted with the LDC application form described the jetty as "...stone walled, except for the base which, to a height at the front (North) face of approx. 30cm, is concrete." The note explained that the proposed repair works were shown in the accompanying drawings and photographs, and stated the only change in appearance would be that "the concrete at the base will, at 90cm high, be a little higher than it is at present".
7. Drawing no. PL1 Rev 01, submitted with the application, provided photographs of the jetty marked up to show the extent of the wall that would be reconstructed, and was annotated with labels including "Existing concrete removed. Piled basal plinth formed."
8. The explanatory material provided by the Council in support of its case is limited to its Officer's report on the application. This describes the proposed works as including "the removal and replacement of the existing concrete base".
9. It seems to me that there may have been some confusion as to the extent of the works proposed. The description of the base of the jetty as being concrete, and the indication on drg no. PL1 that this was to be removed and a new "piled basal plinth" formed, could be interpreted as requiring the removal of much of the existing masonry to enable piles to be driven, and a new concrete basal slab constructed, upon which the jetty would then be rebuilt. If that were the correct interpretation of what is here proposed, I can understand the Council's concern that the operation would go beyond maintenance or alteration. It would involve the demolition of a significant part of the existing jetty, and the subsequent construction of what might be regarded as a "new" building.
10. Whether or not this was the interpretation derived by the Council is unclear. But in any event, I do not think that it is the correct one. The other plan (drg. no. PL2 Rev 01) submitted with the application, which detailed existing and proposed plans and elevations, made no mention of a new piled base. The proposed works at the base of the jetty were described on the layout plan and west elevation shown on this drawing as "poor condition friable concrete around base of quay to be systematically removed, underlying masonry assessed and replaced with new sprayed concrete panel applied." This suggests that rather than removing and replacing concrete from *beneath* the masonry of the jetty, the proposed works are limited to removing and replacing the protective concrete skirt that runs *around* the base of the jetty.
11. Further clarification of the proposed works can be found in the material that accompanied the appeal. The supporting statement explained that the work would comprise re-pointing parts of the walls and reconstructing other parts. The existing stones would be re-used, and if there were not enough, similar

stones would be used. In order to do this the concrete surfacing on top of the jetty would be removed, and re-laid when the work on the walls was complete. The statement advised that a "protective concrete plinth at the base" would be replaced. The appeal was accompanied by amended versions – in each case, revision 01A – of the plans numbered PL1 and PL2 that had been submitted with the LDC application. On the revised version of PL1, the word "piled" (in reference to the plinth) has been replaced with the word "new". On the revised version of PL2, the description of the removal and replacement of concrete *around* the base has been added to the east and north elevations.

12. Taking all of this into account, my understanding of the works here proposed is that they would consist of dismantling the damaged sections of the stone walls of the jetty shown hatched on drg no PL1.01A, then reconstructing them using the existing stone, with additional similar stone where necessary. Other areas of existing masonry, as detailed on the plans, would be re-pointed and pressure grouted. The works would not involve any piling, or the removal or alteration of the base of the jetty beneath the hatched zone of masonry. Works involving concrete would be limited to the removal, and subsequent replacement, of the surfacing on top of the jetty and the removal, and subsequent replacement, of the protective skirting around the base of the jetty.
13. On that basis, I am satisfied that the proposed works would amount to the repair, rather than the rebuilding, of the existing jetty. While the section of the wall that would be dismantled and reconstructed is considerable, the extent of the works is not in itself a decisive consideration. Of particular relevance in this case is that the affected section of wall would be put back using (so far as possible) the existing stone, in exactly the same position, on the same base. On completion of the works, the only visible difference in the appearance of the jetty would be a slight increase in the height of the protective concrete skirt around its base. But viewing the jetty as a whole, this would not in my judgment constitute a material change to its external appearance.
14. I therefore conclude that the proposed works would fall within the exemption from development set out at s.55(2)(a) of the 1990 Act, and so could lawfully be carried out without the need to obtain planning permission. I will grant the requested LDC on the basis that the works proposed are as I have described above. It is perhaps worth noting here that in the event that more extensive works than those described in the First Schedule of the LDC are (or were) carried out, the LDC would not apply: the question of whether or not such works amounted to development would need to be considered afresh.

Conclusion

15. 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 repairs to the jetty at Vipers Quay 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.

Jessica Graham

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 3 November 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured blue 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 proposed works, as detailed in drawing nos. PL1 Rev 01A and PL2 Rev 01A, consist of dismantling the damaged sections of the stone walls of the jetty (identified on the plans by hatching), then reconstructing them using the existing stone, with additional similar stone where necessary. Other areas of existing masonry, as detailed on the plans, would be re-pointed and pressure grouted. The works would not involve any piling, or the removal or alteration of the base of the jetty beneath the hatched zone of masonry. Works involving concrete would be limited to the removal, and subsequent replacement, of the surfacing on top of the jetty and the removal, and subsequent replacement, of the protective skirting around the base of the jetty.

These works would constitute the carrying out of maintenance and improvement, and would not materially affect the external appearance of the jetty. They would not, by virtue of s.55(2)(a) of the 1990 Act, be development.

Signed

Jessica Graham

Inspector

Date: 14 June 2022

Reference: APP/K1128/X/22/3291595

First Schedule

Repairs to jetty at Vipers Quay

Second Schedule

Land at Vipers Quay, Dittisham, DARTMOUTH, TQ6 0HE

IMPORTANT NOTES – SEE FOLLOWING PAGE

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: 14 June 2022

by Jessica Graham BA (Hons) PgDipL

Land at: Vipers Quay, Dittisham, DARTMOUTH, TQ6 0HE

Reference: APP/K1128/X/22/3291595

Scale: Not to Scale

