



Appeal Decision

Site visit made on 18 May 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/M2840/X/21/3282544

7 St. Andrews Lane, Cranford NN14 4AQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Chris Thompson against North Northamptonshire Council.
 - The application ref NK/2021/0493 is dated 1 June 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 installation of 12 Solar Photovoltaic Panels on south facing roof slope of detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has appealed against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development. The Council has set out its position with regards to the application through its statement of case and confirms it considers that the proposal would not be lawful development and would require planning permission.

Main Issue

3. Given the above, the main issue is whether the Council's deemed refusal to grant an LDC was well-founded.

Reasons

4. An application under Section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
5. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. The main thrust of the appellant's case is that the proposed development would be permitted under Part 14, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO'), which permits

- the installation, alteration or replacement of microgeneration solar PV or solar thermal equipment, subject to certain limitations.
6. Development is permitted by Class A subject to the conditions that A.2.(a) solar PV or solar thermal equipment is, so far as practicable, be sited so as to minimise its effect on the external appearance of the building; (b) solar PV or solar thermal equipment is, so far as practicable, sited so as to minimise its effect on the amenity of the area.
 7. The term 'so far as practicable' is not defined in the GPDO. The Oxford English Dictionary defines the term as 'able to be done; likely to be successful'. While A.1 (c) does not permit the installation of solar PV or solar thermal equipment on a wall which fronts a highway, this does not remove the need to demonstrate compliance with conditions identified under A.2.
 8. The panels would be located on the roof slope which faces towards the highway, St Andrews Lane. The dwelling is within the Cranford Conservation Area (CCA) and is a detached building, located between Nos 5 and 9, which are both Grade II listed buildings. Although the dwelling is set back from the road with intervening vegetation, it is a prominent feature along St Andrews Lane. The panels would be clearly visible from the public domain and would also be visible from the nearby listed buildings and their curtilages.
 9. Although the northern elevation of the building faces towards Butchers Paddock, the set back from the highway is greater compared with the front elevation, and views of it are interrupted by an outbuilding. I therefore consider the north elevation is a less prominent elevation compared with the south elevation. While panels located on the north facing roof would most likely be less efficient than panels located on a south facing roof, it has not been demonstrated that they would not generate energy.
 10. I saw that there are roof lights on the north facing roof. The appellant suggests there is not the required structural integrity of the north roof slope, however, I have been provided with no substantive evidence to show why this would be the case. Indeed, a brochure submitted by the appellant in support of the appeal shows a number of examples where panels are positioned around roof lights. Consequently, I see no reason why it would not be practicable to locate such panels on the north facing roof.
 11. I note that all black panels have been chosen which would sit flush or below the existing roof plane in a regular shape. However, the black panels would contrast significantly with the red roof. The location of the panels on the front elevation would not minimise their effect on the external appearance of the building, nor would they be sited so as to minimise their effect on the amenity of the area.
 12. The appellant has drawn my attention to various examples of buildings in the area which have solar panels. The Council confirm that, with respect to properties at Butchers Paddock, no Certificate of Lawfulness application has been made on the roof of any properties. Similarly, no Certificate of Lawfulness application has been made for solar panels at 17 St Andrews Lane or the property adjacent to The Old Rectory.
 13. I do not have full details of the other properties identified within the appellant's statement of case and cannot therefore be sure of the circumstances of their

installation. The appellant suggests that the panels installed have been in place for a minimum of 3 years. However, the lawfulness or otherwise of the examples cited is a matter for the Council.

14. The appellant has also drawn my attention to KET/2016/0027 which was for the attachment of PV panels to south facing roof slope at 69 Church Street, Burton Latimer, which is located within a conservation area. From the evidence, it is not clear if or how the Council considered whether the solar PV would, so far as practicable, have been sited so as to minimise its effect on the external appearance of the building. Nevertheless, the Council advise that the nearest listed buildings are further away compared with the appeal site and so the panels cannot be considered to affect the setting of the listed buildings. It is therefore not comparable to the appeal scheme before me.
15. While roof design and finish are varied within the CCA, my consideration of the appeal is limited to whether the proposal would comply with the limitations of the GPDO, as set out above. I acknowledge that the appellant already employs a range of methods to minimise energy consumption at the property and general energy. However, such matters are not relevant to my consideration of the appeal scheme.
16. The appellant has not demonstrated, on the balance of probabilities, that the solar panels would, so far as practicable, (a) be sited so as to minimise its effect on the external appearance of the building; and (b) be sited so as to minimise its effect on the amenity of the area. Consequently, the appeal scheme would not be permitted by Part 14, Class A of Schedule 2 of the GPDO and is development for which planning permission is required.

Conclusion

17. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the installation of 12 Solar Photovoltaic Panels on south facing roof slope of detached house 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.

M Savage

INSPECTOR