



Appeal Decision

Site visit made on 11 July 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 21 July 2022

Appeal Ref: APP/C3240/X/22/3291987

14 Larkspur Glade, Randlay, Telford TF3 2AQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Mackenzie against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2020/0447, dated 20 April 2020, was refused by notice dated 9 September 2021.
 - The application was made under section 191(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a single storey side extension and boundary wall.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellants. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellants' own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
3. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Background and Main Issue

4. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) 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). Time limits are set out in Section 171B. The relevant time limit for operational development is (1) the end of the period of four years beginning with the date on which the operations were substantially completed.

5. I must consider whether the appellants have shown, on the balance of probabilities, that the development was substantially completed four or more years prior to the date of the application.
6. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Evidence

7. The appellants have submitted Statutory Declarations¹, which say that the extension was completed by 15 November 2015.
8. Corroborating evidence includes a photograph purporting to show the inside of the extension, dated 18 April 2016; a boiler maintenance/service checklist, dated 15 November 2015; a receipt for kitchen worktops, dated 17 July 2015; a warranty for a resin driveway stating a completion date 18 November 2014; a Building Regulations Compliance Certificate, dated 28 September 2014, relating to gas safety; undated photographs showing the extension and wall; and an invoice for a garage door, dated 07 November 2013.

Analysis

9. The Statutory Declarations carry significant weight as sworn evidence. They state when the works were substantially completed, which was more than four years prior to the date of the application. The supporting evidence provides useful corroboration. I accept the Council's concerns about the undated photographs and the non-specific nature of some of the supporting evidence. Nonetheless, the totality of this evidence shows that building works had taken place at the property at the relevant time.
10. The Council's primary concerns arise from a statement made by the appellant during a retrospective application to regularise the works. It seems that the appellant indicated the works were not substantially completed until 2017. However, this matter has now been addressed through the submission of sworn evidence.
11. I find that the appellants' evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, that the development was substantially completed four or more years prior to the date of the application.

Conclusion

12. 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 a single storey side extension and boundary wall 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.

Debbie Moore

Inspector

¹ Under the Statutory Declarations Act 1835.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 20 April 2020 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellants' evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, that the development was substantially completed four or more years prior to the date of the application.

Signed

Debbie Moore

Inspector

Date: 21 July 2022

Reference: APP/C3240/X/22/3291987

First Schedule

Single storey side extension and boundary wall

Second Schedule

Land at 14 Larkspur Glade, Randlay, Telford TF3 2AQ

NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 July 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

Land at: 14 Larkspur Glade, Randlay, Telford TF3 2AQ

Reference: APP/C3240/X/22/3291987

Scale: NTS

