



Appeal Decision

Site visit made on 8 November 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/D3830/X/21/3280647

High Point, Brook Street, Cuckfield RH17 5JJ

- 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 Ms Tara Hopwood of Summit Trust International SA against the decision of Mid Sussex District Council.
- The application ref DM/21/1682, dated 27 April 2021, was refused by notice dated 22 June 2021.
- The application was made under section 191(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 four garages.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the 4 garages constitute permitted development by virtue of the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

2. Class E, Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse, subject to limitations.
3. The 4 garages are used to house classic cars owned by the occupant of the house. These are in addition to a triple garage and a double car port. The house is a substantial, contemporary building set within a large plot overlooking the High Weald Area of Outstanding Natural Beauty. The Council has not suggested that the 4 garages have been erected outside the curtilage of the dwelling or that their purpose is not incidental to the enjoyment of the dwellinghouse. Considering their size, positioning and layout in the context of the dwellinghouse and its plot, I see no reason to conclude otherwise.
4. Paragraph E.1(c) states that a building would not be permitted by Class E if any part of it would be situated on land forward of a wall forming a principal elevation of the original dwellinghouse. The main parties disagree about which elevation is the principal elevation, and therefore whether the garages are situated on land forward of a wall forming a principal elevation of the original dwellinghouse.

5. The phrase 'principal elevation' is not defined in any relevant legislation. The Council has referred to what it describes as the normal dictionary meaning of 'principal' being first in importance. The Government's Technical Guidance¹ does not clearly define the phrase, but explains that it is 'understood' as follows:

'...in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation'.

6. These provide helpful, but not conclusive, indications of how the principal elevation of a dwellinghouse may be identified. There is nothing to suggest the dwellinghouse has been extended, and the evidence suggests its current form is that of the original building. As a contemporary building of bespoke design, set over two levels on a sloping site, the appeal dwelling is not of a standard shape or form typically seen in most houses.
7. The appeal site is accessed from Brook Green, which is a private drive, off Brook Street. As Brook Green is a private drive over which there is no public right of way, Brook Street is the main highway serving the house, which sets its postcode. This is located a significant distance to the east, beyond neighbouring houses and gardens. No part of the appeal building can be seen from the main highway. I do not therefore consider this to be a helpful feature when identifying the principal elevation of the appeal dwelling. The Technical Guidance confirms the principal elevation will not always be the part of the house which fronts the main highway serving it.
8. The appeal dwelling's south-east elevation includes two entrances with large, glazed panes beneath high, open sided porticos, either side of a concave central wall containing tall, narrow windows. It is single storey in height, with angled brickwork walls running off either side of the porticos. A crescent shaped tiled pitched roof forms the gables of the porticos, with a flat roof behind. The south-east elevation is the first part of the building visitors to the appeal site experience. The entrance porticos are attractive features and provide a restrained grandeur to what is otherwise a modest elevation.
9. The south-east elevation faces towards the gated entrance of the property and a parking area. Notwithstanding the appellant's references to this area being the 'back yard' of the appeal dwelling, this is the front of the appeal site because the gated entrance opens into it. The south-east elevation, containing the 2 formal entrances to the appeal building and facing towards the gated entrance, is the front elevation of the dwellinghouse where most visitors would expect to enter the building.
10. The north-west elevation of the dwellinghouse comprises 2 convex walls at different levels. It faces out to a large expanse of open ground, offering wide,

¹ Permitted development rights for householders (2019)

striking views of rolling countryside. This is a 2 storey elevation, with a wider lower-ground floor wall comprising 5 sets of French doors and windows opening onto a large decked area with a swimming pool, covered outside seating area and fire pit. The upper-ground floor wall is almost completely glazed with floor to ceiling windows/doors opening onto a wide terrace above the lower-ground floor part of the building. It has a white rendered finish around that glazing. A sweeping staircase leads from the decked area to the terrace at the southern end. This is the rear elevation of the dwellinghouse, which is more private and informal, but also grander, than the front elevation.

11. The appeal dwelling has evidently been designed to take advantage of the falling land levels and open countryside views to the north-west. Its 2 entrances on its front elevation are its main formal entrances on account of their orientation towards the entrance to the site and their porticos. However, these do not define the house, and the front elevation is understated and of relatively simple design in the context of the appeal site and the overall architecture of the building.
12. In contrast to the front elevation, the rear elevation is clearly the most important feature of the dwelling to its occupants and most visitors, which has been designed around its expansive countryside views. Although this is not the front elevation, does not contain the main entrances to the building, and is more private and informal than the front elevation, it is much larger in width and height, contains many more doors/windows, and forms the main focal point and distinctive part of the dwellinghouse. The extensive glazing and doors, wide terrace and stepped convex walls of the rear elevation comprise the main architectural features of the building, rather than the front entrance porticos. The rear elevation is the appeal building's most impressive and important aspect.
13. Views of the dwellinghouse from outside the appeal site are limited. Brook Green is a private drive, and as such the front elevation is not visible from any public land. The few users of Brook Green can see the front elevation, but not the rear elevation. The Council's officer report refers to a public right of way to the west of the appeal site which affords views of the rear elevation, from where the front elevation would not be seen.
14. Taking all of the above into account, in this particular case, the rear elevation is the principal elevation of the dwellinghouse. The lower-ground floor and upper-ground floor walls of the rear elevation both comprise 'a wall forming the principal elevation of the original dwellinghouse'.
15. Brickwork walls inset from the upper-ground floor rear wall lead around the building to adjoin the angled brickwork walls which run off the front elevation entrances. These do not form part of the principal elevation on account of the extent that they are set back from the rendered part of the upper-ground floor level rear wall and their modest finishes. They are more akin to side elevation walls.
16. The Technical Guidance advises that a hypothetical line should be drawn through the principal elevation to the boundaries of the land surrounding the house to identify the land situated forward of the walls forming the principal elevation. The accompanying diagrams of the Technical Guidance suggest that a straight line should be drawn consistent with the walls forming the principal

elevation, which is not possible with the convex walls of the principal elevation in this case.

17. Considering the wording of Class E and the non-standard shape of the appeal building, I consider the logical approach would be to draw a hypothetical straight line through the two end corners of the rendered part of the upper-ground floor rear elevation wall. These are the most recessed parts of the principal elevation, closest to the opposing front elevation of the dwelling. All 4 of the garages are situated behind that hypothetical line and are not therefore situated on land forward of a wall forming the principal elevation of the original dwellinghouse. They therefore accord with paragraph E.1(c).
18. The Council considers the garages accord with all other limitations of Class E and I see no reason to conclude otherwise. The garages constitute permitted development under Class E, Part 1 of Schedule 2 of the GPDO.

Conclusion

19. 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 the 4 garages in the terms set out above 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.

Formal Decision

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

L Douglas

INSPECTOR

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 28 April 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The four garages comprise development within the meaning of section 55 of the Town and Country Planning Act 1990 (as amended), for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the four garages shown on the plans labelled JOB NO. G560 DRAWING NO. PL.16, JOB NO. G560 DRAWING NO. PL.04 REV. B, and JOB NO. G560 DRAWING NO. PL.02 REV.A., since that development falls within Class E, Part 1 of Schedule 2 of that Order. The four garages are therefore permitted development.

Signed

L Douglas
Inspector

Date: 18 November 2022

Reference: APP/D3830/X/21/3280647

First Schedule

Four garages

Second Schedule

Land at High Point, Brook Street, Cuckfield RH17 5JJ

IMPORTANT NOTES – SEE OVER

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 November 2022

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Scale: Not to Scale

