
Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2022

Appeal Ref: APP/J0405/X/21/3278761

Land at 8 Copse Gate, Winslow, Buckinghamshire MK18 3HR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 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 D Keston against Buckinghamshire Council.
 - The application Ref. 21/01390/ACL is dated 31 March 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 described as "retention of amateur radio masts/poles to support antennae".
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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.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. The main parties agreed that I can reach a decision based on the representations and supporting information submitted by them as a matter of course during the appeal process.
3. The appeal is made against the failure of the Council to give notice within the prescribed period for a decision on an application for a certificate of lawful development comprising existing radio masts/poles to support antennae. The Council has subsequently advised that had they made a decision, the application would have been approved.

Main Issue

4. Section 191(4) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

5. The main issue is whether the appellant can demonstrate, on the balance of probability, that the radio mast/poles to support antennae were constructed on or before 31 March 2017, so as to be immune from enforcement action. The onus of proof is on the appellant and the test is the balance of probability.

Reasons

6. The appeal premises is a detached residential bungalow. The appellant holds an Amateur Radio Licence and is a member of the Radio Society of Great Britain. He requires aerials to participate in his hobby and has erected a mast and a number of poles within his rear garden to support antennae.
7. The mast and poles are identified on the existing site and sections plans which accompanied the original application¹. The appellant maintains that he erected the main mast, identified as 'A' on the plans, on 14 March 2017. In addition, the short wall mounted pole plus vertical antenna identified as 'B' was erected in 2012 and the short pole for wire antenna, identified as 'C' was erected in January 2017. It is those three operations for which the LDC is sought. The application was supported by a Statutory Declaration (SD) from the appellant confirming when the unauthorised operations took place and by a further SD from a near neighbour, confirming that those operations took place at least four years prior to the date of the application.
8. The Council has not provided any evidence to refute the appellant's version of events and now accept that on the balance of probability the masts/poles and antennae applied for are immune from enforcement action. I have had regard to representations made by a neighbouring resident. However, the concerns raised relate to the aesthetics of the development which is not a matter for consideration in this appeal, which relates solely to an application for an LDC. Whilst I appreciate that the neighbour first raised his concerns with the Council in November 2020, the Council did not issue an enforcement notice at that time. The relevant date in this appeal is therefore the date when the application for the LDC was made, and as set out in paragraph 5 above.
9. The SDs are precise and unambiguous. They set out clearly when the operations took place, and in the absence of any evidence to contradict the details set out in the SDs then that evidence must be taken as correct.
10. Consequently, the circumstances of this case are such that I am satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the building operations in question are lawful.

Conclusion

11. For the reasons given above I conclude, on the evidence available, that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the 1990 Act.

Elizabeth Pleasant

INSPECTOR

¹ Sections as Existing, Drawing Ref: E101, dated March 2021 & Plan as Existing, Drawing Ref: E100, dated March 2021.

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 31 March 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 plans 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 available evidence demonstrates that, on the balance of probability, the operations took place at least 4 years before the date of the application.

Signed

Elizabeth Pleasant

INSPECTOR

Date 7 December 2022

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First Schedule

Mast and poles identified as 'A', 'B' and 'C' on Plans with Drawing Refs: E100 and E101, dated March 2021, which are attached to this certificate.

Second Schedule

Land at 8 Copse Gate, Winslow, Buckinghamshire MK18 3HR

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

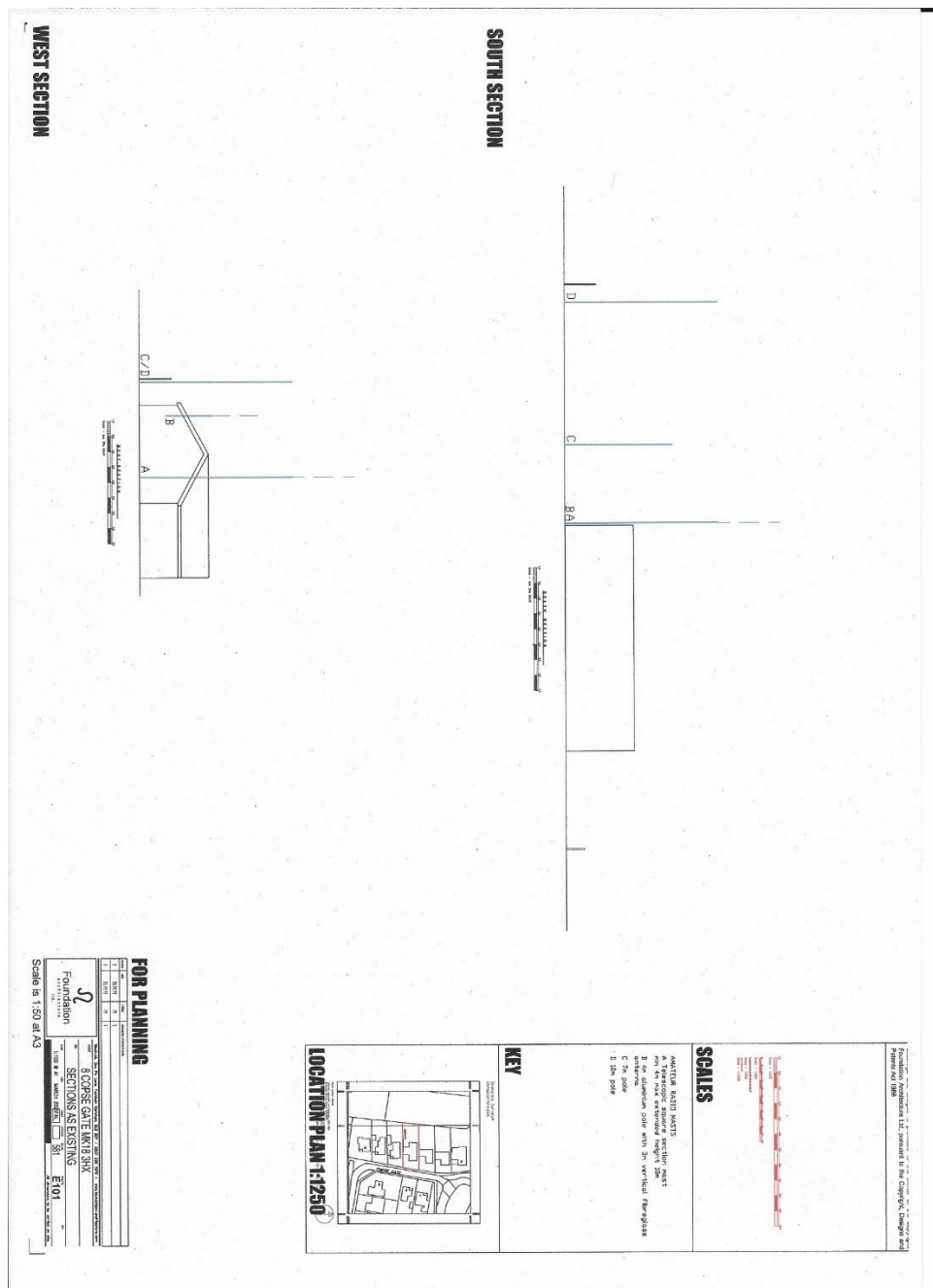
This is the plan referred to in the Lawful Development Certificate dated: 7 December 2022

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Scale: Not to Scale



Plan

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