



Appeal Decision

Site visit made on 29 August 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal Ref: APP/J1915/X/22/3301570

42 Bell Lane, Widford, WARE, SG12 8SH

- 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 Mr Dean Butti against the decision of East Hertfordshire District Council.
 - The application ref 3/22/0543/CLPO, dated 14 March 2022, was refused by notice dated 1 June 2022.
 - The application was made under section 192 of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of solar panels.
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Decision

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

Preliminary and Procedural Matters

2. The description of development appearing in the banner heading above is taken from the Council's Decision Notice. This is because although the application referenced the 'installation of PV cell array 12 panel over existing roof', section 8 of the application form was incomplete.
3. The Council's Decision Notice refers to conflicts with limitation A.1.(c) and Conditions A.2.(a) and (b) of Class A of Part 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO). However, subsequent to a shift in the Council's understanding of limitation A.1.(c) and an associated interpretation of Condition A.2.(a), the Council have confirmed in writing that they do not wish to contest the appeal.
4. The reference to Condition A.2.(b) in the Decision Notice is not, however, addressed in the Council's submission. I return to this matter below.
5. The Council confirm that they have since approved a second application for the development of the installation of '12 PV cells to shallow pitched concrete tiled roof' (application ref. 3/22/1417/CLPO refers); nevertheless, I shall proceed to consider the LDC as applied for.
6. At my site visit I saw that some solar panels had been installed on the building. It is unclear as to when this took place. For the avoidance of doubt, my assessment is based on the information provided to the Council and whether or not the proposed development would have been lawful or not at the date of the application.

Main Issue

7. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. That turns on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class A of Part 14 of Schedule 2 of the GPDO.

Reasons

8. The appeal site consists of an extended detached bungalow bordered by gardens. The principal elevation of the building faces on to Bell Lane; Ware Road lies to the rear. The site lies within a Conservation Area.
9. The development shown on the submitted plans consists of an array of 12 connecting solar panels set in 2 rows to the western side of the front roof slope of the bungalow.
10. Class A of Part 14 of the GPDO allows for the 'installation or alteration etc of solar equipment on domestic premises'. This is subject to certain specified restrictions and conditions. There is no evidence before me to suggest that the dwelling in question does not benefit from the provisions of the GPDO.
11. There is now no dispute between the main parties that the proposed installation would meet the specified restrictions in paragraph A.1 of Class A, including limitation A.1.(c). This concerns wall-mounted equipment and applies to sites within a Conservation Area. However, as the proposal is for roof-mounted equipment, in agreement with the Council's revised position, I am satisfied that the proposal is not caught by the A.1.(c) limitation.
12. Condition A.2.(a) requires that the equipment is, so far as practicable, sited to minimise its effect on the external appearance of the building. The GPDO does not provide a definition for the term 'so far as practicable'. Ordinary definitions of the term 'practicable' include 'able to be done or put into practice successfully' and 'able to be used; useful'. Additionally, ordinary definitions of 'minimise' include 'reduce something to the smallest possible amount or degree'.
13. The front roof slope is roughly south-facing. To facilitate successful use of the solar panels their siting would be best placed on this roof slope where their orientation and inclination would maximise solar input. Although this forms part of the building's frontage, the panels are shown clustered to the western side of the roof. Here they would benefit from the highest degree of the site's enclosure by a tall evergreen boundary hedge to the Bell Lane frontage and vegetation along the site's western boundary.
14. Fronting on to the more minor of the flanking roads, only limited glimpses of the panels would be visible from the open driveway entrance and across the more-sparsely vegetated eastern boundary. Accordingly, I find the panels would be positioned to minimise the effect on the external appearance of the building.
15. For those reasons, and that the proposed position closer to the centre of the site would maximise the distance from nearby houses on the northern side of Bell Lane and offset the panels from the principal views and outlook from the nearest property on the opposite side of the road, I find that, so far as

practicable, the equipment would be sited so as to minimise its effect on the amenity of the area. This would meet the requirement of Condition A.2(b).

16. For completeness, Condition A.2(c) requires that the equipment is removed as soon as reasonably practicable when no longer needed. The application form confirms that the proposed operation of the panels would be temporary. Their removal when no longer required was subsequently confirmed by the appellant in correspondence with the Council on 5 June 2022. Accordingly, I find there would be no reason to anticipate conflict with that condition of the Class A provisions.

Other Matters

17. I note the frustrations expressed by the appellant in relation to the level of engagement by the Council prior to determination of the application. However, this is not a matter for my considerations as part of an appeal under section 195 of the 1990 Act as amended.

Conclusion

18. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful development 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.

R Hitchcock

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 14 March 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations would constitute permitted development within the terms of Schedule 2, Part 14, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

R Hitchcock

Inspector

Date: 07 September 2023

Reference: APP/J1915/X/22/3301570

First Schedule

The erection of solar panels.

Second Schedule

Land at 42 Bell Lane, Widford, WARE, SG12 8SH

IMPORTANT NOTES – SEE OVER

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 my decision dated: 07 September 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

Land at: 42 Bell Lane, Widford, WARE, SG12 8SH

Reference: APP/J1915/X/22/3301570

Scale: not to scale

