



Appeal Decision

Site visit made on 15 August 2023

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 September 2023

Appeal Ref: APP/D1265/X/23/3314683

Glenwoods, Poole Road, Lychett Matravers, Dorset, BH21 3RP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ian Fendley against the decision of the Dorset Council.
 - The application Ref: P/CLP/2022/05533, dated 7 September 2022, was refused by notice dated 28 November 2022.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is a proposed enlargement of the dwellinghouse consisting of a side extension.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed development which is considered to be lawful.

Background and Main Issue

2. In an application for a LDC the onus is on the applicant to demonstrate, on the balance of probabilities, that the proposed development would be lawful.
3. 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.
4. Planning policies and merits of the proposal are not relevant to my decision which is made solely based on matters of fact and law.
5. The **main issue** is whether the Council's decision to refuse to grant a LDC was well-founded. This turns on whether or not the proposed extension benefits from planning permission for "*The enlargement, improvement or other alteration of a dwellinghouse*" granted by Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order").
6. Other than in respect of the limitation at A.1(e)(i), which is disputed, the parties agree the extension would satisfy all other conditions and limitations of Class A. I also have no reason to consider otherwise.

Reasons

7. Class A.1(e)(i) states that development is not permitted by Class A if *"the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse"*.
8. With regard to assessing what constitutes a 'principal elevation', the technical guidance (TG) to the Order¹ defines the principal elevation in most cases as *"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"*.
9. Glenwoods is an isolated single storey detached dwelling house set within its own grounds. It is located a considerable distance away from the main highway which is accessed via a long private track. As such it is not visible from or faces a highway. Constructed in the 1960s it was originally built on an 'L' shaped plan form. At that time the west-facing elevation contained the main entrance door into the property, centrally located serving the main entrance and hallway, with three windows to one side and two to the other side. Having regard to the evidence before me and to the TG above, I find this west-facing elevation to be the principal elevation of the building.
10. The building was extended in later years, including a forward projecting single storey extension from the corner of the front elevation. As part of that development, the original front door was blocked up and a new main entrance door and windows were added into the new extended northern elevation of the building. From that point to the present day this northern elevation has the appearance of what would ordinarily be regarded as the front of the building and the principal elevation.
11. However, the TG guidance must be read in the context of the statute. For the purposes of Class A the term "original" in relation to a building is defined in Article 2 of the Order to mean the building "as existing" on 1 July 1948, or, if built on or after that date "as so built". In this case therefore, for the purposes of Class A the "principal elevation of the original dwellinghouse" remains the previous west-facing one, not the north-facing one.
12. While I note other parts of the Order have been referred to by the parties, there is no flexibility in terms of the wording and purpose of the statute. In some parts of the Order "original" (as defined) in relation to buildings is referred to and is the relevant context, but not so in all parts of the Order. Hence, in this regard the Order purposely discriminates in its application to different contexts. Previous appeal decisions² have also been referred to, all but one of which interprets the Order as I have done so.
13. Overall, from my own observations and taking account of all the physical factors and evidence before me, I find that the west-facing elevation forms the

¹ Permitted development rights for householders: Technical Guidance (2019)

² APP/L3245/X/22/3300401, APP/D2320/X/22/3294330, APP/B9506/X/12/2171626, APP/N4205/X/22/3292676

“principal elevation”. The proposed extension would therefore satisfy the limitation at A.1(e)(i) and benefits from the planning permission granted by the Order.

Conclusion

14. For the reasons given above I conclude on the evidence now available that the Council’s refusal to grant a lawful development certificate in respect of the proposed side extension at Glenwoods, Poole Road, Lychett Matravers, Dorset, BH21 3RP, was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

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 7 September 2022 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

1. The proposed extension would benefit from planning permission pursuant to Article 3(1) and Class A, Part 1, to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Thomas Shields

Inspector

Date 11 September 2023

Reference: APP/D1265/X/23/3314683

First Schedule

Enlargement of the dwellinghouse consisting of a side extension

Second Schedule

Land at Glenwoods, Poole Road, Lychett Matravers, Dorset, BH21 3RP

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 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, 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.

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 the Lawful Development Certificate dated: 11 September 2023

by Thomas Shields DipURP MA MRTPI

Land at: Glenwoods, Poole Road, Lychett Matravers, Dorset, BH21 3RP

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