



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/V3120/X/23/3319375

121 Pinnocks Way, Oxfordshire OX2 9DE

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Geoff Hitchen against the decision of Vale of White Horse District Council.
 - The application Ref P22/V2176/LDE, dated 12 September 2022, was refused by notice dated 9 January 2023.
 - 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: Lawful development certificate confirming that work undertaken on-site (in accordance with planning permission P17/V1698/FUL) was in accordance with the planning permission, and is therefore immune from enforcement action (along with the future completion of the approved development).
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Summary of Decision

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

Preliminary Matter

2. The main parties do not consider that a site visit is necessary for the purposes of my assessment. Given the main issue and dispute between the parties, as I shall subsequently describe, I agree it is not necessary to undertake a site visit and therefore injustice to the parties does not arise from my assessment being undertaken solely on the written evidence before me.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well founded.

Reasons

4. In matters such as this, the onus is on the appellant to demonstrate their case on the balance of probabilities. My assessment is therefore fact sensitive.
5. Planning permission¹ was granted (the permission) for a proposed single and two storey extension and alterations to form 4 no. one bedroom flats with parking, refuse bin and amenity space on 25 September 2017. The parties then

¹ Council Ref P17/V1698/FUL

agree that a material operation was carried out pursuant to the permission before its expiration, in the form of footings.

6. Condition 5 of the permission (the condition) is then in dispute between the parties as to whether it constitutes a true conditions precedent which goes to the heart of the permission and has therefore stymied the lawful implementation of the permission. It reads:

No development shall commence until details of vehicular access to the site have been submitted to and approved in writing by the Local Planning Authority. Such details shall include visibility splays in both directions. The access and visibility splays shall be provided prior to the occupation of the flats and, thereafter, the visibility splays shall be permanently maintained free from obstruction to vision.

Reason: In the interest of highway safety in accordance with Policy DC5 of the Vale of White Horse Local Plan 2011 Saved Policies.

7. The Council contends that the condition was required for highway safety and is pertinent not only to end users of the development but all users of the highway within the vicinity. I do not disagree with this.
8. However, the physical requirements of the condition, being the provision of access and visibility splays, only bites prior to the occupation of the flats. It therefore was not deemed necessary from a highway safety perspective to secure the provision of any works prior to a material operation or other phase of the construction.
9. I appreciate the condition could be regarded as one that goes beyond the detail of a matter that has been agreed in principle, but it relates to one particular aspect of the development. Moreover, whilst the Council would be unlikely to permit the development without these additional details, there is very little evidence before me to demonstrate on the balance of probabilities that accepting the details at a latter trigger point, had there been a variation to the condition or drafted differently, would have made the development otherwise unacceptable.
10. I am therefore not persuaded that the context or intended function of the condition, being highway safety but only prior to occupation, was to prevent the commencement of the planning permission. As a matter of fact and degree, the condition is not of such significance that it goes to the heart of the permission. As a matter of planning judgement, the condition cannot therefore be regarded as a true conditions precedent, which is thus consistent with relevant case law².
11. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore discharged the necessary burden of proof to demonstrate their case on the balance of probabilities.

² Whitley & Sons v Secretary of State for Wales (1992); Laws LJ in Norris v First Secretary of State [2006]; R (Hart Aggregates) v Hartlepool Borough Council [2005]; Meisels v SSHCLG [2019] EWHC 1987 (Admin).

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 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

13. 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.

Paul T Hocking

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

The appellant has discharged the necessary burden of proof to demonstrate their case on the balance of probabilities.

Signed

Paul T Hocking
Inspector

Date: 6 October 2023

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First Schedule

The work undertaken on-site (in accordance with planning permission P17/V1698/FUL) was in accordance with the planning permission, and is therefore immune from enforcement action (along with the future completion of the approved development).

Second Schedule

Land at 121 Pinnocks Way, Oxfordshire OX2 9DE

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: 6 October 2023

by **Paul T Hocking BA MSc MRTPI**

Land at: 121 Pinnocks Way, Oxfordshire OX2 9DE

Reference: APP/V3120/X/23/3319375

Scale: DO NOT SCALE



0 50 100 METRES
1:1250 SCALE



North

LOCATION PLAN.

Scale 1:1250

Drawing No. 200417 : 1

Date : June 2017