



Appeal Decision

Site visit made on 5 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/J0405/X/23/3314658

South Mead, Bernards Close, Chearsley, Aylesbury, HP18 0BY

- 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 Andrew Yorke against the decision of Buckinghamshire Council.
- The application ref 22/03795/CPL, dated 9 November 2022, was refused by notice dated 12 January 2023.
- The application was made under section 192(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 to install 6 flush with tiles solar panels on rear roof and 10 on the front.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the install of 6 flush with tiles solar panels on rear roof and 10 on the front which is found to be lawful.

Main Issue

2. The main issue is whether the decision of the Council to refuse the application for a certificate was well founded.

Reasons

3. Class A, Part 14 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) establishes that the installation of microgeneration solar PV equipment on a dwellinghouse is permitted development, subject to a number of exclusions. Of particular relevance to this appeal is paragraph A.1(c) which states, development is not permitted by this Class if:

"in the case of land within a conservation area or which is a World Heritage Site, the solar PV or solar thermal equipment would be installed on a wall which fronts a highway"

4. The Council has stated that the site lies within the Chearsley Conservation Area, and the appellant also confirms this to be the case.
5. The appellant contends that the GPDO refers to the installation of the equipment on a wall, rather than a roof as is proposed in this case. It is the Council's contention that the proposed development would fall within the description of development not permitted by paragraph A.1(c) above, *"as the application site would fall within a Conservation Area and the proposed solar panels would be installed on the front roof slope which fronts a highway, namely Bernard's Close."*

6. However, the position taken by the Council is fundamentally flawed. The Council, in its statement of case, substitutes the term roof slope into its reasoning, whereas the wording of paragraph A.1(c) specifically refers to wall.
7. In my view, the terms wall and roof slope are distinct and separate, and the use of wall within paragraph A.1(c) can not be taken to include the roof slope. In coming to this view, I am particularly mindful of paragraph A.1(a) of Class A, Part 14, which specifically refers to both wall and roof slope, indicating that they are to be considered separately. Paragraph A.1(c) does not refer to both, but rather refers solely to a wall.
8. As such, the installation of microgeneration solar PV equipment within a Conservation Area, on a roof slope fronting a highway is not prevented from being permitted development by paragraph A.1(c).

Conclusion

9. 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 install of 6 flush with tiles solar panels on rear roof and 10 on the front 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.

Martin Allen

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 9 November 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 reason:

The proposal is permitted development in accordance with Class A, Part 14 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Martin Allen

Inspector

Date: 27 October 2023

Reference: APP/J0405/X/23/3314658

First Schedule

Install 6 flush with tiles solar panels on rear roof and 10 on the front

Second Schedule

Land at South Mead, Bernards Close, Chearsley, AYLESBURY, HP18 0BY

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.

