



# Appeal Decision

No site visit was made

**by M. P. Howell BA (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>TH</sup> NOVEMBER 2023**

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**Appeal Ref: APP/X2220/X/22/3312371**

**Strathmore, 37 The Drove, St Margaret's Bay, Kent CT15 6BZ**

- 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 Gerald Irvine against the decision of Dover District Council.
  - The application ref DOV/22/01169, dated 6 September 2022, was refused by notice dated 9 November 2022.
  - 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 development is sought is the Installation of a wind turbine to rear gable end.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Lawful Development Certificate (LDC) seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority. Planning merits of the development are of no relevance in this instance.
3. I have taken the description of development from the Appeal Form as it provides a more concise description than that outlined on the original planning Application Form. The Site location Plan and annotated photographs supplied with the appeal show the wind turbine to be positioned on the rear gable projection of the property.
4. I am satisfied that the appeal can be determined on the evidence before me, and no site visit was necessary. Both parties were made aware of this and provided time to respond. No comments were received to the determination of the appeal without a site visit.

## Main Issues

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the wind turbine would have been lawful on the date of the application, considering whether the proposal amounts to development works that are permitted by Article 3, Schedule 2, Part 14, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. ('the Order').

## Reasons

6. S192(2) of the Town and Country Planning Act 1990 (as amended) (the Act 1990) sets out that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In this respect, the burden of proof is on the appellant in an LDC and based on the balance of probabilities.
7. Class H of Schedule 2, Part 14 of the Order permits the installation or alteration of a wind turbine on domestic premises. Part H permits the installation, alteration or replacement of a microgeneration wind turbine on (a) a detached dwellinghouse; or (b) a detached building situated within the curtilage of a dwellinghouse or a block of flats. There does not appear to be any contention that the proposal would be contrary to the conditions set out in H.1 and H.2 of Class H. However, the dispute turns on whether Strathmore is a detached dwellinghouse.
8. Schedule 2, Part 14 of the Order refers to a 'detached dwellinghouse' in several instances, and this term has been defined in Class P. Interpretation of Part 14. This defines a detached dwellinghouse or detached building as a 'dwellinghouse or building, as the case may be, which does not share a party wall with a neighbouring building.' There is no strict definition of a 'dwelling' or 'dwellinghouse' in the Act 1990 or the GPDO. But *Gravesham*<sup>1</sup> is the lead case law on defining a dwelling, which indicates that a dwelling is a building that ordinarily affords the facilities required for day-to-day private domestic existence.
9. Based on the appellant's submissions, it is evident that Strathmore is a dwellinghouse. Also, it would appear that the adjoining building, referred to as the cottage, was once a granny annex but is now a separate dwellinghouse let by the appellant. The appellant indicates that the cottage shares internal and external walls with Strathmore. This is corroborated to some extent by the Site Location Plan submitted with the appeal, which shows 39 The Drove way adjoining Strathmore (identified as 37 The Drove way on the same plan).
10. Accordingly, as Strathmore is a dwellinghouse that shares a party wall with a neighbouring building, I am of the view that it cannot be classed as a 'detached dwellinghouse' in respect of the definition of Part 14, Class H of the GPDO.
11. The relevant date for determining whether the development would be lawful is the date of the application, which in this case is 6 September 2022. Consequently, the history of the site and whether the building was at some time detached is not relevant in this instance. Further to this, the definition simply indicates that a detached dwellinghouse and/or building must be detached and should not share a party wall with a neighbouring building. As such, the ownership of the land or properties, the Council tax banding and whether the adjoining cottage is a house or flat is also not relevant.
12. Accordingly, on the balance of probability, it has not been demonstrated that at the time of the application, the development would have been permitted by Class H of the Order.

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<sup>1</sup> *Gravesham BC v SSE* [1984] 47 P&CR 142

## **Other Matters**

13. As indicated in the preliminary matters, the planning merits of any operations or the objectives of the Council's local development plan policies are not relevant in an LDC. These matters would be pertinent for a planning application, but whether or not the wind turbine is supported by local and national environmental policies or is harmful to neighbours living conditions is not a determinative factor. An LDC must be considered solely on the facts of the case, the relevant planning law and judicial authority.
14. I note that the appellant indicates it is possible to locate the wind turbine on a garage outbuilding, which could be permitted as part of Class H. As indicated above, the burden of proof is on the appellant to make their case by setting out the specifics of the proposal and providing the necessary evidence. As the proposal is to erect the wind turbine on the gable of Strathmore, I have determined it on that basis. If the appellant was seeking a decision in respect of a wind turbine on a detached garage building, then the necessary plans and details would be needed to indicate such a proposal.
15. Validating an LDC is different to determining whether the LDC should be granted lawfulness. There is certain information, such as application forms, a fee and plans that would be needed to validate the application, but this would not be determinative of its lawfulness. I understand that the appellant feels frustrated by the proposal being considered differently to what was expected and in light of advice they received. However, the conduct of the Council in this instance and any previous discussions prior to the application being submitted is not a matter that affects my findings.

## **Conclusion**

16. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful development in respect of the installation of a wind turbine to the rear gable end of a domestic premises was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*M. P. Howell*

INSPECTOR