



Appeal Decision

Site visit made on 7 November 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/D0840/X/22/3307411

Carne Cottage, Zennor, St Ives, Cornwall, TR26 3BU

- 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 Ms Enya Zoe James against the decision of Cornwall Council.
 - The application ref PA22/00218, dated 17 January 2022, was refused by notice dated 4 July 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 use or development is sought is the extension to the rear of a dwelling, an art studio/home office/home gym; an outbuilding; a double garage, plant and store room; and a solar PV array.
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Decision

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

Preliminary Matters

2. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under s195, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus rests with the appellant to prove lawfulness on the balance of probability.
3. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded. This was based on whether the proposed developments are permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).

The site and relevant planning history

5. Carne Cottage is in a remote exposed coastal moorland location within an Area of Outstanding Natural Beauty and a defined Heritage Coast. It is a low single storey structure in very poor condition and which appears to have been vandalised. It has an overgrown enclosed area of land to the west side and the site is accessed by a narrow, unmade track from the B3302, which the Council says is not a highway.

6. Planning permission was granted in 1957 for an artist's studio and workshop but the structure fell into disrepair and is not substantially evident on site today.
7. An LDC for the continued residential use as a dwelling with its associated curtilage was granted in March 2021 (PA21/00388).

Reasons

8. The appellant has submitted detailed drawings showing an extension to the rear of the dwelling; an art studio/home office/home gym; an outbuilding; a double garage, plant and storeroom; and, a solar panel array, all of which are considered by the appellant to be permitted development under the GPDO. These are proposed to be located to the west side of the cottage within its curtilage. The Council does not take issue with the appellant's description of the curtilage and from my own inspection of the site I would agree with these conclusions. Following the usual factors established through the courts in considering the extent of curtilage, as a matter of fact and degree, the layout, ownership and an intimate functional relationship between the land and the dwelling all lead to such a conclusion.
9. The GDPO grants a general permission for specified classes of development subject to conditions and limitations. The classes are included in Schedule 2 and the limitations make reference Article 2(3) land which includes AONBs.

The Extension

10. The extension falls to be considered under Part 1, Class A and it would satisfy the relevant criteria including size and height with the exception that the Council does not agree with the appellant's interpretation of the 'principal elevation'. Class A.1 (e) (i) does not permit an enlargement of the original dwellinghouse if it would extend beyond a wall which forms the principal elevation of the original dwellinghouse. The principal elevation is defined in the government's technical guidance¹ which essentially indicates that it usually fronts the highway, contains the main architectural features of the dwelling and is usually what is understood to be the front of the house.
11. On my site inspection I arrived at the property along the track and I saw a building that had its front door and porch facing the trackway flanked by windows. Old extensions to the north and south flanked the cottage and the larger extension to the south projected forward of the original cottage and porch. I have no doubt that this represented the principal elevation as the west elevation is at the rear of the cottage and faces the enclosed garden/studio/workshop area. Whilst I note that there is an element of judgement in determining the principal elevation, I find that the Council's approach to regard the west elevation as the principal elevation on the basis that it too had a door flanked by windows and had a view over the garden and surrounding moorland, to be interesting in concept but not one I agree with. It should be noted that views are irrelevant to determining the principal elevation and the guidance recognises that a principal elevation can include more than one wall facing in the same direction.
12. Having determined that the east elevation represents the principal elevation, it follows that the proposed extension satisfies the conditions and limitations of

¹ Permitted Development Rights for Householders Technical Guidance; MoHCLG September 2019

Class A, including those of Paragraph A.2 which imposes additional restrictions on extensions with Article 2(3) land.

The Studio etc.

13. In respect of the proposed art studio/home office/home gym, the Council considers it to be too big and greater than one that would be considered to be incidental to the main dwellinghouse and not reasonably be required for the particular dwellinghouse in question.
14. The parties draw attention to matters highlighted in caselaw that are assessed in respect of Class E buildings. An outbuilding must be required for some incidental purpose but its size is not relevant if it is required for a use reasonably incidental to the enjoyment of the dwellinghouse.
15. The proposed studio is large at 90 sqm but this compares to the estimated 77 sqm of the previous studio used by earlier occupants of the property who were established artists. The proposed studio is for the use of the owner and family to pursue their own interests, primarily as an art studio for jewellery production for the purpose of writing and illustrating. It would be open plan and provide for a home office and gym.
16. The Council compares the size to that of the cottage at 48 sqm but this ignores the 88 sqm of the north and south extensions so the correct comparison is 90 sqm as opposed to the existing 136 sqm of floorspace. I do not consider it appropriate to add the size of the proposed extension to this calculation as the extension does not yet exist. Whilst the proposed outbuilding is large, I am mindful of the size of the previous building on site. The proposed uses would be for uses incidental to the enjoyment of the dwellinghouse and that the proposed building appears to be reasonably required to accommodate these uses.
17. The GPDO at Class E sets out the conditions and limitations in respect of outbuildings and these are satisfied. The appellant's detailed site plan illustrates the critical dimensions for the siting of the proposal and shows that these are met in respect of paragraphs E.2 and E.3 regarding development in an AONB. The proposed therefore as shown would be permitted development.

The outbuilding

18. The proposed outbuilding is for use as a shed for the storage of tools, lawnmowers etc which is a purpose incidental to the enjoyment of the dwellinghouse. The floor area is less than 10 sqm and more than 20m from any wall of the dwellinghouse as required by. It satisfies the conditions and limitations of Class E and is permitted development.

The garage

19. A single storey double garage and plant room of 56 sqm is proposed towards the south of the curtilage in a similar location to an earlier outbuilding. Although considerably larger than a double garage the building would provide for storage and for water and solar plant which appear to be reasonably required in view of the isolated location of the property. Its dimensions and siting satisfy the conditions and limitations of Class E and is permitted development.

The PV Array

20. A stand-alone solar PV array is proposed adjacent to an earth and stone wall in a central position to the rear of the rising site. Paragraph B.1 of Part 14 of the GDPO sets out the requirements that need to be met in terms of their size and siting within the curtilage of a dwellinghouse. Condition B.2. (a) states that a stand-alone solar is, so far as practicable, sited so as to minimise its effect on the amenity of the area.
21. The Council consider that the positioning of the solar array towards the higher part of the site would not minimise its impact on amenity of the area and would be likely be seen from outside the site due to the reflectiveness of the panels and its functional appearance. No alternative locations have been suggested where the array's impact on amenity could have been lessened.
22. The array is south facing and positioned to avoid overshadowing from the existing and proposed structures and to be as close as practical to the outbuilding containing the PCV plant. Although the array is likely to be visible from outside the site, this is likely to be the case from any position in the curtilage which is proximate to the plant room and avoids overshadowing.
23. The proposed PV array satisfies the conditions and limitations of Class B and is permitted.

Conclusion

24. 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 extension to rear of dwelling, and art studio/home office/home gym; an outbuilding; a double garage, plant and store room; and a solar PV array 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.

P N Jarratt

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 17 January 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 proposals are within the curtilage of a dwellinghouse and represent permitted development under Schedule 2, Parts 1 and 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

P N Jarratt

Inspector

Date: 27 November 2023

Reference: APP/D0840/X/22/3307411

First Schedule

The development for which a certificate of lawful use or development is sought is the extension to the rear of a dwelling, an art studio/home office/home gym; an outbuilding; a double garage, plant and store room; and a solar PV array.

Second Schedule

Land at Carne Cottage, Zennor, St Ives, Cornwall, TR26 3BU

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 the Lawful Development Certificate dated: 27 November 2023

by P N Jarratt BA (Hons) DipTP MRTPI

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Scale: Not to Scale

