



Appeal Decision

Site visit made on 14 November 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/G2245/X/22/3295526

Ship Cottage, Church Road, Hartley, Longfield, Kent DA3 8DZ

- 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 [hereafter referred to as "LDC"].
 - The appeal is made by Ms Hilary Fox against the decision of Sevenoaks District Council.
 - The application Ref 22/00034/LDCPR, dated 6 January 2022 was refused by notice dated 1 March 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 a new single storey side extension.
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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 considered to be lawful.

Preliminary Matters and Background

2. The reasons why the Council consider that the proposed development would fall outside a householder's permitted development entitlement is that the proposed development would fail to meet the requirements of Schedule 2, Part 1, Class A (A.1, proviso e) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
3. Class A concerns the enlargement of a dwellinghouse but a restriction applies where the enlarged part of dwelling would extend beyond a wall which forms its principal elevation, or the enlarged section fronts a highway and forms a side elevation of the original dwelling.
4. The latter point does not apply as the east facing flank wall of Ship Cottage, a two-storey dwelling, faces towards the highway and the proposed extension would be built onto the north facing wall.
5. The first requirement is therefore applicable and the essence of the appeal must relate to that which is Ship Cottage's principal elevation.

Main Issue

6. The main issue is whether the Council's decision not to issue a LDC was well founded.

Reasons

7. The matter to be decided upon is whether the development, if carried out at the date of the application ie 6 January 2022, would have been lawful. The determination is to be made against the GPDO as subsisted at the time of the application.
8. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me and also the observations made at my site visit.
9. In simple terms, and with reference to the Technical Guidance for householder developments accompanying the GPDO, the principal elevation, in most cases, will be that part of the house which fronts (directly, or at an angle) the main highway serving the house, and it will usually contain the main architectural features such as a porch serving the main entrance to the house. Also, usually but not exclusively, the principal elevation will be what is understood to be the front of the house.
10. The Council, in reaching its decision has taken the dwelling's north facing wall as its principal elevation, and this is based on drawings relating to a Building Control application from 1974. Admittedly, there is a door installed within this façade but, as I understand it, this is not used. In contrast the south facing elevation, which is directly reached via a footpath from Church Road, accommodates what appears to be the dwelling's front door. In illustration, this door is recessed behind a domestic porch which appeared to me to be an original feature.
11. There will only be one principal elevation but, should there be two elevations which may have the character of such, a view would need to be taken as to which of these forms the principal elevation. Given the context I have described, readily apparent from my site visit observations, it seems to me that the said 1974 drawing alone must have predicated the Council's decision and its understanding that the opposite side of the dwelling should be considered as the principal elevation.
12. On the contrary, for the reasons mentioned, it seems obvious that the south facing wall is the principal elevation to Ship Cottage, not just practically and functionally but also by way of the dwelling's physical form.
13. The Council has confirmed its understanding that permitted development rights have not been removed in this instance. Further, there is no indication that the intended dimensions of the proposed extension taken from the submitted plans would pull the development outside the parameters of the GPDO thereby necessitating that planning permission would be required. Indeed, from my reading of the proposal I must agree with the Council's assessment and I am satisfied that all the provisos and limitations listed under Class A are met.
14. However, given my findings as to the principal elevation I must take issue with the appellant's description of the development as this is critical to the scheme's lawfulness. The development is described as a '*single storey side extension*', yet this cannot be the case as the said extension would be recessed from the eastern flank wall and would, instead, be attached to the dwelling's rear elevation.
15. In the circumstances, I shall delete the word 'side' and have instead titled the development on the LDC as the '*erection of a single storey extension*'. This will

then relate itself to the submitted plans which show the proposed extension's location.

16. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in this instance was not well founded, and the appeal should succeed.
17. Accordingly, I shall exercise the powers transferred to me under section 195(2) of the 1990 Act, as amended.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/G2245/X/22/3295526

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)

ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 6 January 2022 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations described in the first schedule would be permitted development within the terms of Article 3 and Class A within Part 1 and Schedule 2 of the Town and Country Planning (General Permitted Development (England) (Order) 2015 as amended.

Timothy C King

INSPECTOR

Date: 16 January 2024

18. First Schedule

Erection of a single storey extension

19. Second Schedule

Ship Cottage, Church Road, Hartley, Longfield, Kent DA3 8DZ

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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.
4. 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 attached to the Lawful Development Certificate dated: 16 January 2024

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

