



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2024

Appeal Ref: APP/C1625/X/23/3329840

The Old Office, Camp Farm, Stroud, Gloucestershire, GL6 7HJ

- 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 Rory Baxter against the decision of Stroud District Council.
 - The application ref S.23/1429/CPL, dated 17 July 2023, was refused by notice dated 11 September 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 for the erection of an outbuilding.
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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.

Applications for costs

2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Preliminary Matters

3. As this appeal relates to the interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the GPDO), a site visit was not deemed necessary.
4. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant and are therefore not 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 planning law and judicial authority.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

6. The site comprises a dwelling that was originally an office building converted in 2015 under Class J, Part 3, Schedule 2 of the GPDO. The proposed development is for the erection of a detached outbuilding and the Council has assessed the application against the limitations and conditions of Schedule 2, Part I, Class E of the GPDO. Class E1.A states that development is not permitted by Class E if "(a) permission to use the dwellinghouse has been

granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule”.

7. Various changes have been made to the GPDO since 2013 when Class J was inserted into the GPDO 1995 as a temporary right ending on 30 May 2016. This granted permission for the conversion of Class B1(a) offices to a use falling within Class C3 dwelling.
8. The GPDO 2015 restated the temporary right (office to dwelling) under Class O to 30 May 2016, but Class O became permanent under a 2016 Amendment Order (No. 332) although it did not restrict permitted development rights of converted properties.
9. The 2021 Amendment Order (No. 428), Article 15 introduced Class MA (commercial, business or service use) replacing Class O and withdrawing Class E permitted development rights for office to residential conversions.
10. The Council acknowledge that the GPDO may not have restricted permitted development for dwellings converted from offices and that prior to 21 April 2021, the proposed development may have been classed as permitted development under Class E. However, they maintain that with the introduction of Class MA to the list of development not permitted under Class E, the proposed development is not permitted.
11. In support of this approach, reference is made to the Technical Guidance on Permitted Development Rights for Householders (September 2019), which in the introduction refers to permitted development rights not applying to houses created through changes of use set out in Classes M, N, P, PA, and Q from shops, premises offering financial and professional services, hot food takeaways, betting shops, payday loan shops, amusement arcades, casinos, laundrettes, premises offering storage or distribution services, light industrial premises and agricultural buildings; or any houses which are flats.
12. This is a comprehensive list but does not specifically refer to ‘offices’. Whilst the Council anticipates that a subsequent update to the Guidance may include reference to Class MA and ‘commercial’ use, it clearly does not at present.
13. The Council’s approach fails to recognise the relevance of the wording in the legislative changes applying to permitted development rights and have endeavoured to interpret it in a particular way over and above what the legislation and advice actually says. In particular, in respect of Class E permitted development rights, the 2013 amendment did not make changes for buildings converted under Class J; the 2015 GPDO revoked the 2013 Order but did not include Class O where Class E does not apply; the 2016 Order did not restrict Class E rights on converted Class O properties; and the 2021 Order introduced for the first time restricted Class E rights for offices converted to residential.
14. The conversion of the building was under Class J of the GPDO 1995 which has since been revoked and no reference to it was carried forward to the GPDO 2015. Additionally the 2021 Order made no reference to Class E rights applying to buildings converted under previous legislation, which it could have done had that been the intention of the legislators. The appeal property became a dwellinghouse when it was converted from which time it could have benefitted

from Class E rights and the no legislation has sought to remove those rights retrospectively.

15. The Council are satisfied that the proposed development meets the remaining conditions and limitations of Class E, but have been unable to refer to any caselaw, appeal decisions or other material that that supports their particular approach in refusing to grant an LDC for the proposed development.

Conclusion

16. 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 erection of an outbuilding 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 July 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto edged and cross-hatched 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 proposed erection of an outbuilding satisfies the conditions and limitations of Schedule 2, Part I, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

P N Jarratt

Inspector

Date: 8 March 2024

Reference: APP/C1625/X/23/3329840

First Schedule

Second Schedule

Land at The Old Office, Camp Farm, Stroud, Gloucestershire, GL6 7HJ

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: 8 March 2024

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Scale: Not to Scale

