



Appeal Decision

Site visit made on 5 March 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/K0235/X/22/3310840

3 Shaftesbury Avenue, Bedford MK40 3SA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Joanne Carey against Bedford Borough Council.
 - The application ref 22/02074/LDP is dated 14 September 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 described as 'Installation of 7 solar panels on the south facing roof'.
-

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.

Procedural Matter

2. Although the solar panels had already been installed at the time of my site visit, the question before me is whether the development would have been lawful on the date of the application. Thus, it remains an application for a proposed development under s192 of the Act.

Main Issue

3. The main issue is whether or not a decision to refuse to issue an LDC would have been well-founded. This turns on whether the solar panels would have been development permitted by Class A of Part 14 to Schedule 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended).

Reasons

4. The Council failed to determine the application within the prescribed period. However, it has provided a report explaining its position in relation to the development. In the report the Council assesses the proposed solar panels against the provisions of Class A, which, subject to certain limitations and conditions, permits the installation of solar PV panels on a dwellinghouse.
5. The report concludes that the proposed development accords with Class A, subject to a single point of clarification, concerning Paragraph A.1.(a). This establishes that a solar PV panel on a roof slope is not permitted if it would protrude more than 0.2 metres beyond the plane of the roof slope, when measured from the perpendicular with the external surface of the roof slope. The lack of clarity on this point was, the Council states, the sole reason for the

failure to determine the application within the prescribed timescale. The Council does not oppose the issuing of an LDC, subject to confirmation on the point.

6. I wrote to the appellant asking for confirmation on this point. The reply confirms that the panels meet the 0.2m limitation, and includes photographs of the installed panels demonstrating this. I agree with the Council that all the other provisions of Class A are also met. Consequently, a certificate for the development can be issued.

Conclusion

7. For the reasons given above I conclude, on the evidence now available, that a decision to refuse to issue an LDC would not have been 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) and grant a certificate for the development.

Peter Willows

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 14 September 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:

On the date of the application, the solar panels would have been development permitted by the provisions of Class A of Part 14 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Peter Willows

Inspector

Date: 12 March 2024

Reference: APP/K0235/X/22/3310840

First Schedule

Installation of 7 solar panels on the south facing roof.

Second Schedule

Land at 3 Shaftesbury Avenue, Bedford MK40 3SA

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 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, 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 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.

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: 12 March 2024

by Peter Willows BA MRTPI

Land at: 3 Shaftesbury Avenue, Bedford MK40 3SA

Reference: APP/K0235/X/22/3310840

Scale: Not to Scale

