



Appeal Decision

Site visit made on 16 April 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal Ref: APP/C1570/X/22/3299666

Bridge Cottage, High Cross Lane, Little Canfield, Essex CM6 1TB

- 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 Peter Robinson against the decision of Uttlesford District Council.
 - The application ref UTT/22/0749/CLP, dated 15 March 2022, was refused by notice dated 22 April 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, 'Remove existing conservatory and replace with larger single-story extension to side elevation'.
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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. Neither party was present at the time of my scheduled site visit. However, I was able to see the relevant areas of the land sufficiently from public land, and an accompanied site visit is not therefore necessary.

Main Issue

3. The main issue is whether the decision of the Council to refuse the application for an LDC was well founded.

Reasons

4. Appeals relating to a Certificate of Lawful Use or Development (LDC) are confined to the narrow remit of determining whether the Council's refusal was well founded. The planning merits of the proposal are not for consideration.
5. The burden of proof is with the appellant to demonstrate that the proposed development would have been lawful on the date the application was made (the relevant date).
6. Section 191(2) of the Act states that operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission, or because the time for taking enforcement action has expired, or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. I have not seen any evidence of an enforcement notice in force on the relevant date, and there is no dispute that the proposal amounts to development for which planning permission is required.
8. The primary consideration is therefore whether, at the relevant date, the development would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), on the basis that it would have constituted 'permitted development' under Part 1, Class A of Schedule 2 of the GPDO (Class A).
9. Class A sets out that the enlargement, improvement or other alteration of a dwellinghouse is permitted development. But development is not permitted if it meets any of the criteria set out in paragraph A.1.
10. The criterion in dispute between the parties is: A.1.(d), that the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. Article 2(1) of the GPDO defines the term existing as, "in relation to any building ... existing immediately before the carrying out ... of development ...".
11. The 'Permitted development rights for householders - Technical Guidance' 2019 (the Technical Guidance) advises that, "*Where the existing house has eaves of different heights, then the restriction on the height of the eaves for the part of the house enlarged, improved or altered is measured against the highest level of eaves on the existing house*". It also states, "The existing house will include previous development to the house...".
12. In this case, the house has developed over a number of years, with several different roof structures and several different eaves heights. Although the eaves of the proposed development would exceed the height of the eaves of the part of the house immediately adjacent to it, it would not exceed the highest level of eaves on the existing house.
13. In my judgement, and on the balance of probabilities, the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would therefore not exceed the height of the eaves of the existing dwellinghouse for the purposes of Class A. As a result, had the development occurred on the relevant date, it would have been permitted development, and planning permission would have been granted by Article 3(1) of the GPDO.
14. Therefore, as planning permission would have been granted by Article 3(1) of the GPDO, enforcement action could not have been taken at the relevant date. Consequently, the development would have been lawful under Section 191(2) of the Act.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the development described as, 'Remove existing conservatory and replace with larger single-story extension to side elevation', was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Peter White

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 15 March 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:

The proposed development would have been permitted development under Class A of Part 1, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (as amended) on the relevant date.

As a result, the development would have been granted planning permission by Article 3(1) of the GPDO at that date.

Signed

Peter White

Inspector

Date: 24 April 2024

Reference: APP/C1570/X/22/3299666

First Schedule

Remove existing conservatory and replace with larger single-story extension to side elevation.

Second Schedule

Bridge Cottage, High Cross Lane, Little Canfield, Essex CM6 1TB

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, was 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 A

The plan referred to in my decision dated 24 April 2024

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Not to scale

