



Appeal Decision

Site visit made on 17 May 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4th July 2024

Appeal Ref: APP/V3120/X/22/3307249

Silver Trees, The Green, Fernham SN7 7NT

- 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 Rogers against the decision of Vale of White Horse District Council.
 - The application ref P22/V0964/LDP, dated 14 April 2022, was refused by notice dated 3 August 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 erection of porch canopy.
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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 Mr Rogers against Vale of White Horse District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant says the proposed development would be permitted under rights conferred by Article 3 and Class D, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Subject to certain parameters, class D permits the erection or construction of a porch outside any external door of a dwellinghouse.
4. Conversely, the Council contends that the lawful planning status of the appeal property is not known, and therefore says the property cannot benefit from any householder permitted development rights.
5. As an application for an LDC, the burden is on the appellant to demonstrate their case, on the balance of probability. Planning merits are not relevant. I have considered the appellant's evidence in accordance with the principle established in *Gabbitas*¹. This says that where there is no evidence to contradict an appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, then it should be accepted.

¹ *Gabbitas v SSE & Newham BC* [1985] JPL 630

Main Issue

6. In this context, the main issue is whether the appeal property benefits from householder permitted development rights conferred by the GPDO.

Reasons

7. The appeal property comprises a modest stone building with a pitched metal sheet roof. The building is surrounded by garden, which is enclosed by a retaining wall to the rear and metal fencing and entrance gate along its frontage. Its general appearance is that of a small cottage.
8. Records show that the building was likely constructed at some point during the 1800s, with historic maps appearing to show the building and its garden as far back as the early 1880s. In terms of use, a postcard from the Pendon Museum refers to it as "*Hurdlemaker's Cottage*", and shows it as it was around the 1930s. A map from the same museum shows the building labelled in the same way. Consistent with this, Berkshire Records Office also has records which describe the building as "*cottage and garden*".
9. These records all suggest that the appeal property was most likely a residential cottage on 1 July 1948, when planning legislation first came into being. Historic photos of the building, showing the cottage with a thatched roof, are consistent with this conclusion.
10. Whilst the Council's own records are unclear in terms of the building's lawful use, it contends that it was more likely used as some kind of workshop, a position reflected in a comment made by a local neighbour. However, there is little evidence before me to corroborate this supposition.
11. Notably, there is also little evidence before me to suggest there has ever been a material change of use of the building. Whilst there may have been periods of disuse or disrepair, there is also no clear indication that its residential use has ever been abandoned. In turn, there is little to suggest any intervening event has changed the established use of the property.
12. On the balance of probability, the evidence therefore suggests the appeal property is, and always has been, a residential cottage. This conclusion is consistent with the general cottage-like appearance of the building, which photos show, has remained broadly consistent throughout its existence. The Council has presented little evidence to contradict this conclusion, nor make it less than probable.
13. Given its established residential use, the property would benefit from householder permitted development rights. Whilst not disputed, I am satisfied the porch canopy would meet the criteria set out under Class D of Part 1, Schedule 2 of the GPDO. This means the proposal would be permitted development, and therefore lawful.

Other Matters

14. Whilst Council Tax has not been paid in respect of the property, this factor alone would not be determinative of its overarching lawful use. The appellant has also demonstrated that attempts have been made to register the property for such purpose, which diminishes the relevance of this point.

15. The evidence suggests the property has always been a residential dwelling, and that this use has not changed nor been abandoned. In turn, it would not be necessary for the appellant to demonstrate any continuous period of residential use for such use to be lawful.

Conclusion

16. 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 erection of porch canopy 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).

James Blackwell

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 April 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 be permitted under Article 3 and Class D, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Mr James Blackwell
Inspector

Date: 4th July 2024

Reference: APP/V3120/X/22/3307249

First Schedule

Erection of porch canopy

Second Schedule

Land at Silver Trees, The Green, Fernham SN7 7NT

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: 4th July 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

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Scale: Not to Scale



Site Location Plan
Scale 1-1250

