

Appeal Decision

Site visit made on 28 August 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal Ref: APP/V2635/X/24/3345068

37 The Old Chequers, Front Street, South Creake, Norfolk NR21 9PF

- 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 Ben van Rooyen against the decision of King's Lynn and West Norfolk Borough Council.
 - The application reference 23/01949/LDE, dated 2 November 2023, was refused by notice dated 2 February 2024.
 - The application was made under section 191(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 improvements and alterations to convert the former cart shed into a games room, including the infilling of the vehicle bays with bi-fold doors and a set of new windows and infill brick on the front (northeast) elevation, and a new door cut into the rear (southwest) elevation for access to the garden.
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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 existing operation which is found to be lawful.

Preliminary Matters

2. There is no dispute that the building to which the appeal relates is a dwelling (Use Class C3). The dwelling is located within a designated conservation area. This has no bearing on the outcome of this appeal, except in so far as it may affect the extent of works permitted by the GPDO. Similarly, the dwelling is identified by the Council to be a non-designated heritage asset, but this also has no bearing on the outcome of the appeal. The appeal will be determined on the facts of the case.
3. The description of development for which an LDC is sought facilitates the use of the former cart shed as incidental residential accommodation. From the evidence before me, the cart shed was used previously for purposes ancillary and incidental to the residential use of the dwelling. As such, no material change of use of the land has occurred. I shall proceed on this basis.

Reasons

4. The **main issue** is whether the Council's refusal to issue an LDC is well founded. This turns on whether the works undertaken benefitted from deemed planning permission granted by the GPDO¹. The relevant test is the balance of probability.
5. Part 1, Class A of Schedule 2, in conjunction with article 3, of the GPDO provides deemed planning permission, subject to conditions, for '*The enlargement, improvement or other alteration of a dwellinghouse.*' There is no dispute that the development carried out comprises development falling within Class A and I see no reason to find otherwise. Condition A.3(a) requires that '*the materials used in any exterior work (other than the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.*'
6. The Technical Guidance² advises that condition A.3(a) is '*intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean they need to be the same materials.*' The Technical Guidance goes on to give examples, which, relative to replacing or inserting new windows, says '*what is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.*' It is a matter of judgement for the decision maker therefore whether condition A3 is met.
7. The dwelling consists of three main sections roughly forming a 'U' shaped footprint and is side on to Front Street. Given the dwelling's unusual footprint, it has considerably more elevations than would normally be expected. Its external walls are a mix of painted brick and stonework, red brick and flint, and render finishes.
8. I saw that each elevation has its own window size, design and configuration. The designs include sliding sash windows, bow windows, side hung windows and bi-fold doors. The different designs come in a variety of sizes. Some of the side hung windows have rectangular fixed lights above them while another has an arched light above. Some windows have a vertical emphasis, while others have a horizontal emphasis. Except for the grey framed conservatory, I find the white colour finish of the frames to be the only consistent window feature throughout the existing dwelling.
9. The glazing within the three-light window above the brickwork panel has an overall horizontal appearance. While this differs in appearance to some of the existing window openings, I find it similar to the overall shape of the ground floor bow window, the first-floor window above the main entrance and to the conservatory glazing. I do not find the section of the former cart shed window frames to be significantly thicker than window frames found elsewhere in the dwelling.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² Permitted Development Rights for Householders Technical Guidance September 2019

10. The bi-fold doors and windows used in the conversion of the cart shed did not have to be of the same material used in the existing dwelling. The bi-fold doors and windows utilised in the conversion have a similar shape and frame size to those in the rear elevation of the dwelling. That, in conjunction with, their white colour finish provides the bi-fold doors and windows with a similar visual appearance to the existing dwelling, in accordance with the Technical Guidance.
11. I was referred to Appeal Reference APP/P2935/X/12/2176242 and provided with an extract from DCP Online purporting to be a synopsis of that appeal decision. That appeal case related to the erection of an extension to a dwelling whereby the gable elevation of the proposed extension was to be almost entirely glazed with 5 thin glazing bars. That Inspector found that the glazed gable would not be like any other elevation or window element in the existing house, which the Inspector observed to be small windows subordinate to the stone walling.
12. That case differs from this one in that these works were carried out within the confines of the existing dwelling. Furthermore, the existing dwelling has several different shaped, coloured and sizes of windows, doors and frames. While the bi-fold doors and windows utilised in the conversion of the cart shed differ from the shape and size of some of the dwelling's windows, they are similar to others. In particular, the ground floor bay window, the first-floor window above the main entrance, and those in the ground floor rear elevation.
13. Taking all these factors together, in my judgement, the overall shape, colour and size of the frames of the bi-fold doors and windows within the former cart shed have a similar visual appearance to those in the existing house in terms of their overall shape, colour and size of frames. They are therefore sympathetic to the existing dwelling and minimize their visual impact.
14. In addition, the infill brickwork matches the colour and finish of the dwelling's existing brickwork. The development undertaken accords with condition A.3(a) of Class A, Part 1 of Schedule 2 of the GPDO and therefore benefits from deemed planning permission granted by Article 3 of the GPDO.

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 improvements and alterations to convert the former cart shed into a games room, including the infilling of the vehicle bays with bifold doors and a set of new windows and infill brick on the front (northeast) elevation, and a new door cut into the rear (southwest) elevation for access to the garden 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).

M Madge

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(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 2 November 2023 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the former cart shed as additional incidental residential accommodation does not constitute development. The operations undertaken, namely the insertion of infill brickwork, bi-fold doors and new windows, comply with condition A.3(a) of Class A, Part 1 of Schedule 2 of the GPDO. The operations were therefore permitted development at the time they were undertaken.

Signed

M Madge

Inspector

Date: [12 September 2024]

Reference: APP/V2635/X/24/3345068

First Schedule

Improvements and alterations to convert the former cart shed into a games room, including the infilling of the vehicle bays with bifold doors and a set of new windows and infill brick on the front (northeast) elevation, and a new door cut into the rear (southwest) elevation for access to the garden.

Second Schedule

37 The Old Chequers, Front Street, South Creak, Norfolk NR21 9PF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [12 September 2024]

by M Madge Dip TP MA MRTPI

Land at: 37 The Old Chequers, Front Street, South Creake, Norfolk NR21 9PF

Reference: APP/V2635/X/24/3345068

Scale: Not to Scale

