
Appeal Decisions

Site visit made on 1 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal A Ref: APP/W1525/X/23/3314719

Heathfield, Dowsett Lane, Stock, Essex CM11 1JH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Michael Gatrell against the decision of Chelmsford City Council. The application ref 22/02164/CLOUPD, dated 25 November 2022, was refused, in part, by notice dated 22 December 2022.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is described in the application form as follows:
construction of single storey rear and two single storey side extensions.
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Appeal B Ref: APP/W1525/X/23/3314103

- The appeal is made under section 195 of the Act.
 - The appeal is made by Mr and Mrs Jason Bloor against the decision of Chelmsford City Council. The application ref 22/01811/CLOUPD, dated 28 September 2022, was refused by notice dated 25 November 2022.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is the construction of incidental domestic outbuilding.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Inspector's Reasons

3. The existing dwelling is a detached chalet style bungalow set in a spacious plot. It is located on the eastern side of Dowsetts Lane. The principal elevation of the dwelling faces North. There are two existing buildings located at the site to the northeast of the main dwelling. The larger building serves a garage use, whereas the smaller building serves a home office and home gym. Appeal A seeks a certificate for proposed construction of single storey rear and two single storey side extensions. Appeal B relates to a proposed incidental domestic outbuilding: I have taken that description from the application form.
4. The application for an LDC is made under s192(1)(b) of the Act. Namely, that the proposed operational development would have been lawful at the date of the application. Section 191(2)(a) of the Act explains that operations are lawful at any time if either no enforcement action may be taken in respect of them, because they did not require planning permission, or they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The latter does not apply in this case as far as I am aware. It therefore follows that the appellant needs to show, that, on the balance of probabilities, the proposed development in either appeal would have been lawful because express planning permission is not required by virtue of article 3 of the Town and Country Planning (General Permitted Development) Order 2015 as amended ("the GPDO").

5. In Appeal A the Council issued a split decision. It considers the proposed single-storey rear extension and side extension to the east elevation would have been lawful at the date of the application. This is because the proposed rear and side extension (east) would constitute permitted development and planning permission is granted for it by virtue of part 1, Class A to the GPDO. It refuses to grant a certificate for the proposed single-storey side extension to the western elevation, because it would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse. It held that this element of the proposal would conflict with sub-section (e)(ii) of Class A to the GPDO.
6. An appeal against a refusal to grant an LDC is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well founded; that is, the decision itself, not necessarily the reasons for it.

The proposed single-storey side extension to the western elevation

7. Dowsett Lane is served by a verge that sits between the carriageway and the western boundary of Heathfield. The plans clearly show the existing western elevation of the building positioned in proximity to the highway: that is what I observed at the time of my site visit. The proposed single storey side extension would be located between that west-facing side elevation of the original dwelling and Dowsett Lane. So, the proposed single-storey extension (west) would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse, which, clearly, infringes sub-section (e)(ii) of Class A to the GPDO.
8. My interpretation matches guidance found in the "permitted development rights for householders" technical guidance (2019). The advice on page 14 clearly explains how the Class A.1, sub-section (e) should be applied in circumstances where the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation or fronts a highway and forms a side elevation of the original dwellinghouse. The latter certainly applies to this proposed side extension.
9. In all representations submitted on behalf of the appellant, the agent forcefully argues about the need for consistency in decision-making. This is because in this case an identical proposal was approved by the Council in November 2016. The lawfulness of any operation for which a certificate is in force shall be conclusively presumed unless there is a material change before the operations are begun, in any of the matters relevant to determining such lawfulness. However, for whatever reason that LDC was not relied upon, and the scheme had not been implemented as permitted development. The written submissions refer to a further application for an identical scheme in August and December 2022. On both occasions, the Council determined to issue a split decision.
10. The agent argues that there has been no material change in circumstances. Class A, paragraph A.1, sub-section (e)(ii) has not been amended between 2016 and 2022, but that does not necessarily mean interpretation and application in practice has not evolved over time. I acknowledge there is a need for consistency because like decisions should be determined in a like manner. However, just because an LDC was granted in 2016 for the same development, it does not automatically follow that an LDC will always be granted at any point in time. Consistency is about approach and the application of law or policy to particular facts and circumstances. Unlike court judgments, I am not bound by a previous decision made by the Council - the authority is not bound by its own decisions - provided there is good reason for a departure from a previous decision in a similar LDC application.
11. In a case like this, the key is the date of the application because circumstances may change as time marches on. In my judgment, the previous decision by the Council was probably erroneous but later decisions are based on several appeal decisions clarifying how Class A.1 sub-section (e)(ii) should be approached and applied, especially where a side wall of the

original dwellinghouse fronts a highway as in this case. I do not consider an LDC should be granted for the proposed side extension to the west elevation just because the Council granted an LDC for the same development in 2016.

The outbuilding

12. The provision of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by virtue of Class E to the GPDO. The development right is subject to the basic criteria of curtilage and incidental purpose as well as meeting physical tolerance. As far as I am aware, the proposed outbuilding would meet with the latter and be located within the curtilage to Heathfield. Essentially, the LDC is refused because the proposed office/gym outbuilding is not required for purposes incidental to the enjoyment of the dwellinghouse.
13. The crux of the argument is that there is an existing outbuilding located at the site which serves an office and home gym: which I saw. The plan is to remove this structure following completion of the proposed outbuilding. The Council's view is that the mechanisms of an LDC do not facilitate the removal of existing development, although that would, potentially, be a separate matter. Nevertheless, the Council considers that the proposal would result in the duplication of an existing outbuilding, which would contain the same uses.
14. The Council's submissions refer to well established case law¹, but it acknowledges that the size of the proposed outbuilding in relation to its intended use as a home office and gym does not suggest a level of unreasonableness that would lend itself towards the unrestrained whim of the occupier nor are the uses ones that would not be ordinarily found within an ancillary domestic outbuilding. However, the proposal before me must be determined with reference to the date of the LDC application. The latter includes a covering letter and drawings SK1 Rev A, SK10, SK11 and SK12. To assess if the proposal meets the basic criteria in Class E, one needs to consider the proposal in the round. It is reasonable to consider the covering letter, but necessary to examine the proposed plans which describe the proposed development and seek an LDC for that proposal.
15. In that context, I find the Council's refusal reason unjustified. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable the decision-maker to understand exactly what is involved. Drawing no. SK11 is clearly annotated and marked with the following text: "The existing temporary container housing home gym and home office to be removed following completion of proposed home office and home gym". That is also consistent with the covering letter (28 September 2022). I have no hesitation in concluding that the proposed outbuilding would be genuinely and reasonably required for an incidental purpose based on the application before me.
16. If this proposed operation had commenced, on the application date, it would have been lawful for planning purposes as the appellant must comply with the plans submitted with the application for an LDC. I draw attention to s192(4) of the Act and the advice found at paragraph: 002 Reference ID: 17c-002-20140306 of the national planning practice guidance. This explains that the lawfulness of any operations for which a certificate is in force under s192(1)(a) shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.
17. It is correct conditions cannot be imposed on an LDC. However, as I have already said elsewhere, for this proposed development to satisfy Class E to the GPDO, it must comply with the terms of the application, and that includes drawing no. SK11. If that does not

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 090.

materialise, it would, potentially, be a separate planning enforcement matter. I draw attention to the notes attached to the certificate. These clearly state any operation which is materially different from that described may result in a breach of planning control which is liable to enforcement action.

Other matters

18. The appellant refers to the need for the proposed extension in Appeal A. An LDc appeal can only be considered on the facts of the case and relevant planning law. Planning merits are not relevant at any stage.

Conclusions - Appeal A and B

19. In Appeal A, for the reasons given above, and having regard to all other matters, I have exercised accordingly the powers transferred to me in section 195(3) of the Act.
20. In Appeal B, drawing all the above threads together, I conclude, on the evidence now available and balance of probabilities, that the Council's refusal to grant the LDC for the construction of incidental domestic outbuilding was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the Act.

A U Ghafoor

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 28 September 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Act, for the following reason:

For the purposes of the Act the operations are lawful because they would not involve development or require planning permission by virtue of article 3, schedule 2, part 1, class E to the Town and Country (General Permitted Development) Order 2015 as amended.

Signed

A U Ghafoor

Inspector

Date: 20 November 2024

Reference: APP/W1525/X/23/3314103

First Schedule

Construction of incidental domestic outbuilding in accordance with drawing no. SK1 Rev A, SK10. SK11 and SK12.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Heathfield, Dowsett Lane, Stock, Essex CM11 1JH.

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Act.

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 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 use or 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 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:20 November 2024

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

Land at: Heathfield, Dowsett Lane, Stock, Essex CM11 1JH.

Reference: APP/W1525/X/23/3314103

Scale: Not to Scale

