



Appeal Decision

Site visit made on 10 December 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 06 January 2026

Appeal Ref: APP/P0240/X/25/3370896

Whistlebrook, Sewell Lane, Sewell, Bedfordshire LU6 1RP

- 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 A Arber against the decision of Central Bedfordshire Council.
 - The application ref CB/25/01129/LDCP, dated 11 April 2025, was refused by notice dated 5 June 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The development for which an LDC is sought is the enclosure of an undercroft.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The LDC application was made under section 192(1)(a) of the Act which seeks to establish whether the proposed development would be lawful. Section 192(2) sets out that if on application under this section, the local planning authority is provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, that is 11 April 2025, they shall issue a certificate to that effect. In any other case they shall refuse the application.
3. Section 191(2)(a) and (b) of the Act sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for an LDC which must be considered in the light of the facts and the law. The onus is firmly on the applicant (appellant) to demonstrate that, on the balance of probabilities, the proposed development would be lawful.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well founded. The decision turns on whether the proposal is development that materially affects the external appearance of the building and thus requires express planning permission.

Reasons

6. The appeal relates to a former stable building with associated residential accommodation that has been converted into a two-storey detached dwellinghouse. Permitted Development Rights under Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO), which allow for the enlargement, improvement or other alteration of a dwellinghouse, have been removed in the interests of safeguarding the character of the area and openness of the Green Belt.
7. The LDC application sought a determination as to whether the enclosure of the existing undercroft located on the corner of the dwellinghouse would be lawful. Although the term “undercroft” typically denotes a space situated beneath the ground level of a building, in this instance the area proposed for enclosure is at ground floor level, positioned directly beneath the first floor of the two-storey dwellinghouse.
8. The meaning of development is set out in section 55(1) of the 1990 Act and includes the ‘carrying out of building, engineering, mining or other operations in, on, over or under land’. Section 55(1A) stipulates that ‘building operations’ include: demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder.
9. There is no dispute between the parties that the works as proposed amount to development comprising structural alterations, additions to buildings and works normally undertaken by a builder.
10. There are categories of work that are excluded from the definition of development, and these are set out in s55(2) of the 1990 Act. They include building operations that do not materially affect the external appearance of a building. “Materially affect” has no statutory definition but as the National Planning Practice Guidance¹ advises, the term is “linked to the significance of the change which is made to a building’s external appearance”. “Building” is defined at s336 of the 1990 Act as any structure or erection, and any part of a building...”
11. The appellant argues that the proposed works to enclose the undercroft would be “hardly noticeable from outside the application site”. Thus, they consider that the addition to the building would not constitute “development” for which planning permission would be required because it would not materially affect the external appearance of the building.
12. It was held in *Burroughs Day v Bristol City Council*, [1996] 1 P.L.R 78 that for works to materially affect external appearance, the changes must be visible from different vantage points and material to the appearance of the building as a whole and not by reference to a part of the building taken in isolation. The alteration must be one which affects the way in which the exterior of the building is or can be seen by an observer outside the building. Vantage points need not solely be those related to views from the public realm, but they should not be unusual. Alterations seen from any vantage point on the ground or from any neighbouring building(s) are capable of affecting the external appearance.

¹ Paragraph: 001 Reference ID: 13-001-20140306

13. Materiality must also consider the nature of the building being altered and the nature of the alteration. Thus, for works to have a material effect on the external appearance of a building they must be more than de minimis and have some effect in planning terms. Very minor additions or alterations may be held to fall within the de minimis principle.
14. The appeal site occupies a sloping plot, with its highest point adjoining the public highway which has high verges on either side. The land within the site has been excavated to create a level platform for the building, resulting in a pronounced difference in height between the road and the dwelling. As the dwelling sits considerably lower than the highway, views from the road are directed towards the first-floor level and views towards the undercroft are limited when observed from outside the site, including from the neighbouring property situated in close proximity to the southwest.
15. The section of the building proposed to be enclosed is presently open on two sides, with a brick plinth in the outer corner which supports the upper floor level. Enclosing this space would result in a notable increase in the internal ground floor area of the dwellinghouse, creating an enlarged utility room and a new en-suite bathroom. The submitted plans indicate that the external walls of the infill would be constructed using brick to match the existing dwelling. On the broader southwest elevation, a new door and window would be installed, while on the southeastern side a high-level window is proposed to provide natural light to the en-suite bathroom.
16. In arguing that the works should not be regarded as materially affecting the dwelling's external appearance, the appellant relies primarily on the limited visibility from the public realm and the neighbouring property.
17. While I am mindful of the judgement in *Burroughs Day*, which confirms that any changes must be visible from a number of normal vantage points, I find no reference to any distinction between public and private views when establishing what constitutes normal vantage points. Given the scale of the proposed works as shown on the drawings and observed at my visit, it is my judgement that they would result in a significant physical change that would affect the external appearance of the dwelling to an extent that is material. The works would alter the way in which the exterior of the building is perceived by an observer outside the building from two sides, with the changes being most apparent from ground level vantage points within the appeal site. These would not be unusual vantage points.
18. In applying the materiality test, I find that, as a matter of fact and degree, the substantial and sufficiently extensive physical works proposed would alter the visual appearance of the building in a manner that would be noticeable and more than negligible. The works would therefore materially affect the external appearance of the building. Consequently, they constitute development and are not excluded from being so by section 55(2) of the 1990 Act.
19. As permitted development rights have been removed, it is not for me to consider whether the proposed development may otherwise have been permitted by Part 1 Schedule 2 of the GPDO.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the enclosure of an undercroft

was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR