



Committee and date

South Planning Committee

16 January 2018

### Development Management Report

Responsible Officer: Tim Rogers

email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

#### Summary of Application

<b>Application Number:</b> 17/03114/CPE	<b>Parish:</b>	Bridgnorth Town Council
<b>Proposal:</b> Application for Lawful Development Certificate to confirm that the existing works of loft conversion, erection of porch with pitched roof and pitched roof over garage, installation of bow window to front elevation, creation of hardstanding to front garden, dropped kerb and erection of garden wall were within permitted development or have been completed for more than four years		
<b>Site Address:</b> 11 Greenfields Road Bridgnorth Shropshire WV16 4JG		
<b>Applicant:</b> Mrs Gillian Fuller		
<b>Case Officer:</b> Richard Fortune	<b>email:</b> <a href="mailto:planningdmse@shropshire.gov.uk">planningdmse@shropshire.gov.uk</a>	

**Grid Ref:** 371059 - 293777



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Contact: Tim Rogers (01743) 258773

**Recommendation:- A Lawful Development Certificate be issued for the following reason:**

The works to which this application for a lawful development certificate relates, comprising of a loft conversion; erection of porch with pitched roof extending over the front of the garage; creation of hardstanding to the front of the property with associated dropped kerb and erection of garden boundary wall are works which constitute development under Section 55 of the Town and Country Planning Act 1990. From the information available, and on the balance of probability, all of the works were completed in excess of four years prior to the 12th July 2017. Even if any of the works did not fall wholly within the conditions and limitations of permitted development rights that were in force at the time the works were carried out, the fact that they constitute 'operational development' and were carried out more than four years ago, means the Council would be time-barred from taking any planning enforcement action. A certificate of lawful development can therefore be issued.

**REPORT**

**1.0 THE PROPOSAL**

1.1 This request for a lawful development certificate for development already carried out in respect of the following matters:

- 1) Loft Conversion
- 2) Erection of porch with pitched roof and pitched roof over garage
- 3) Bow window on front elevation
- 4) Creation of hardstanding in front garden with associated dropped kerb
- 5) Erection of garden wall

It is asserted that all the above works were within permitted development rights or have been completed for a period in excess of four years prior to the date of the application. Each element is considered in turn below.

1.2 The applicant is a member of staff, working in the Development Management Team.

**2.0 SITE LOCATION/DESCRIPTION**

2.1 The property is a detached dwelling situated outside of a conservation area. It occupies a rectangular plot with the estate road to the south east, detached properties on either side to the south west and north east. To the rear the garden backs onto a footpath, on the opposite side of which are the rear gardens to properties on Dunval Road.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The application must be determined by Committee because it relates to the property of an officer of the Council who either directly or indirectly reports to the Planning Services Manager.

#### **4.0 Community Representations**

Not applicable to a lawful development certificate application.

#### **5.0 THE MAIN ISSUES**

5.1 Under Section 191 of the Town and Country Planning Act 1990, as amended, an application may be made to the Local Planning Authority if any person wishes to ascertain whether specified works carried out are lawful. The relevant date for the determination is the date that the application was validated. In this particular case where the specified works set out at paragraph 1.1 above are 'operational development' the main issue is whether the works, at the time they were carried out, fell within permitted development rights then in force, or whether they have been substantially complete for a period in excess of four years prior to the date of submission of this application. ( Under Section 171B of the Town and Country Planning Act 1990, as amended, enforcement action may be taken in respect of a breach of planning control only within four years of the occurrence of operational development and change of use to use as a single dwellinghouse, and 10 years in all other cases).

5.2 The effect of issuing a lawful development certificate means that no enforcement action may then be taken in respect of those works covered by the certificate. The onus of proof in the submission of lawful development certificate applications relating to works already carried out rests with the applicant. Where a local planning authority has no evidence of its own, or from others, to make the applicants version of events less than probable, a certificate has to be issued.

#### **6.0 OFFICER APPRAISAL**

6.1 Loft Conversion: The documentation provided with the application, in the form of a letter to Bridgnorth District Council with a received date of 4<sup>th</sup> February 1976 seeking confirmation that the loft conversion the subject of building regulations application BR/1052A; letter from Crescourt Loft Conversions Limited dated 24<sup>th</sup> May 1976 to the Chief Planning Officer of Bridgnorth District Council relating to the formation of a room in the roof space confirming that the works have been completed and a ready for inspection; a copy of the Building Inspection notice of the same date advising of completion of the work. The loft conversion did not involve any enlargement of the roof space and is lit by two velux windows/rooflight on the rear elevation roof slope, with minimal projection above the top surface of the roof tiles. This information is sufficient, on the balance of probability, to demonstrate that, even if the works were not covered by 'Permitted Development' rights in 1976, that these works have been substantially complete for a period in excess of 4 years prior to the relevant date of this request (12-07-17).

6.2 Erection of porch with pitched roof and pitched roof over garage: A Google Image photograph of the front of the property, with an 'image capture' annotation by Google of March 2009 shows the enclosed porch with a monoptych roof that extends across the front of the attached garage. As built the estate file shows that the attached garage projected forward of the main front wall of the dwelling, and its flat roof extended to form a flat roofed canopy over the front door. (Document 394/402 on file 71159385). While no details of dimensions of the porch and roof

have been supplied, and no evidence of the date that these works were carried out ascertain whether the works fell within the limits of ‘Permitted Development’ rights applicable at that time, the dated Google image is, on the balance of probability, sufficient to demonstrate that these works have been substantially complete for a period in excess of 4 years prior to the relevant date of this request (12-07-17).

- 6.3 Bow Window on front elevation: A Google Image photograph of the front of the property, with an ‘image capture’ annotation by Google of March 2009 shows the bow window installed on the front elevation of the dwelling. The dated Google image is, on the balance of probability, sufficient to demonstrate that the bow window was installed in excess of 4 years prior to the relevant date of this request (12-07-17).
- 6.4 Creation of hardstanding in front garden with associated dropped kerb: A Google Image photograph of the front of the property, with an ‘image capture’ annotation by Google of March 2009 shows the front garden of the property as a tarmac hardstanding with a narrow border adjacent to a low brick wall along the northern site boundary. This image also shows part of the pavement, but not the kerb edge where it abuts the highway carriageway. However an invoice dated 23<sup>rd</sup> August 2005 has been submitted from G.R. Minton and Sons giving the job details of “Construct new tarmac drive at the above property.” The reference to ‘drive’ and not just a hardstanding would indicate that the works involved the creation/modification of an access onto the highway. The applicant states that these works were completed in 2005. A site inspection has established that the dropped kerb extends across the whole site road frontage.
- 6.5 Greenfields Road is an unclassified road. Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) Order (GPDO), through its various amendments during the period applicable to this request, has stated that the following is Permitted development:

*“The formation, laying out and construction of a means of access to a highway which is not a trunk or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).”*

Under Schedule 2, Part 1, Class F of the same Order (In the version that was in force between 3<sup>rd</sup> June 1995 and 30<sup>th</sup> September 2008) the following is stated to be permitted development:

*“Development consisting of –*

- (a) *The provision within the curtilage of a dwelling house of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such;*

While the hardstanding in place would not appear to have the permeable surface which, for its size is now a condition of the Class F permitted development right, this condition came into effect with an October 2008 amendment to the GPDO. The invoice supplied is considered sufficient evidence to demonstrate that the work was carried out prior to October 2008 in line with the requirements of permitted development in force at that time. In any event, the dated Google image is, on the

balance of probability, sufficient to demonstrate that the hardstanding has been substantially complete for a period in excess of 4 years prior to the relevant date of this request (12-07-17).

- 6.6 Erection of garden wall: A Google Image photograph of the front of the property, with an ‘image capture’ annotation by Google of March 2009 shows the garden wall as a boundary wall to the one side of the property. The height of this wall, as may be established from the brick courses shown on the photograph, is less than 1 metre above ground level. Schedule 2, Part 2, Class A of the GPDO states that following is Permitted development:

*“The erection, construction, maintenance, improvement or other alteration of a gate, fence, wall or other means of enclosure.”*

There are conditions attached to this permitted development right and the stipulation relevant to the wall in this particular location that it should not exceed 1 metre in height where adjacent to a highway used by vehicular traffic, or 2 metres not adjacent to such a highway, is met. In any event, the dated Google image is, on the balance of probability, sufficient to demonstrate that the wall has been substantially complete for a period in excess of 4 years prior to the relevant date of this request (12-07-17).

## 7.0 CONCLUSION

- 7.1 The works to which this application for a lawful development certificate relates, comprising of a loft conversion; erection of porch with pitched roof extending over the front of the garage; creation of hardstanding to the front of the property with associated dropped kerb and erection of garden boundary wall are works which constitute development under Section 55 of the Town and Country Planning Act 1990. From the information available, and on the balance of probability, all of the works were completed in excess of four years prior to the 12<sup>th</sup> July 2017. Even if any of the works did not fall wholly within the conditions and limitations of permitted development rights that were in force at the time the works were carried out, the fact that they constitute ‘operational development’ and were carried out more than four years ago, means the Council would be time-barred from taking any planning enforcement action. A certificate of lawful development can therefore be issued.

## 8.0 Risk Assessment and Opportunities Appraisal

### 8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ☐ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- ☐ The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions,

rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

## 9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Application documents.
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Cabinet Member (Portfolio Holder) Cllr R. Macey
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Local Members Cllr Christian Lea Cllr William Parr
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