



Appeal Decision

Site visit made on 2 June 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/L3245/X/22/3309076

Coppice Cottage, Knowlegate, Ludlow, Shropshire SY8 3AJ

- 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.
 - The appeal is made by Mr David Howard against the decision of Shropshire Council.
 - The application ref 22/02972/CPL, dated 28 June 2022, was refused by notice dated 10 August 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as the proposed conversion of existing detached garage into ancillary accommodation.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed use which is found to be lawful.

Preliminary Matters

2. An application under S192(1) of the Town and Country Planning Act 1990 (as amended) (the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. Notwithstanding the description of the proposed development refers to the conversion of the garage into ancillary accommodation, the application submissions detail proposed external and internal alterations to the building. Thus, I have considered the appeal both in terms of the proposed use of the building and the proposed alterations.
3. Section 192(2) sets out that if on application under this section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The onus is firmly on the appellant to make out their case, on the balance of probabilities. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

5. This is whether the Council's decision to refuse the LDC was well founded. This turns on whether the proposed works and use of the existing detached garage for ancillary accommodation would be lawful.

Reasons

6. The Council's appeal submissions state that the proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E(d), (e), (f) and E.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'). This class confers permitted development rights for 'the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building...'. The Council further considers that the building, being beyond the wall of the dwellinghouse and fronting the highway, would have failed to meet (c) of Class 1 of the 1977 Order which it is said was in place at the time the garage was built.
7. The appeal building was the subject of a planning permission granted in 1985 (ref SS/1985/91/P) and already exists. I could see at my site visit it has been in existence for a considerable period and is currently used for domestic storage. I have no evidence that the building is not lawful. Whether it would be lawful to use it for purposes in association with the residential use of the main dwellinghouse is dependent on whether the proposal would be considered to be development.
8. Section 55(1) of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(2) sets out that certain operations or uses of land shall not be taken for the purposes of the Act to involve development of the land, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
9. It is not disputed that the primary use of Coppice Cottage is that of a single dwellinghouse. The proposal is for the conversion of the detached garage to additional residential accommodation for family members in association with the residential use of the host dwelling. To facilitate the proposed use, works are proposed both internally and externally. Internally, the proposed conversion would provide space for a workshop, utility room, kitchen area and bathroom at ground floor level and a living and bedroom area on the first floor. The internal works would not amount to development under the provisions of s55(2)(a)(i) of the Act.
10. External alterations to the appeal building are proposed by way of replacing one of the garage doors on the front elevation with a pedestrian door and infilling with stonework to match the existing, and the blocking up of an entrance doorway on the side elevation. The garage would remain otherwise unaltered externally. Whether or not alterations to the exterior of a building fall within development will involve consideration of the change to the external appearance of the building as a whole and not a part in isolation. The degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations/works are all considerations.
11. The garage is set back from the road and partly obscured from view by existing boundary vegetation, its orientation and the sharp bend in the road. The proposed works to the exterior would be minor alterations and would retain its appearance and character as a modest detached outbuilding. In consideration

of the above, I find that the proposed operations would not materially affect the external appearance of the building. Therefore, the proposed external works would not amount to development as set out by s55(2)(a)(ii) of the Act.

12. The appeal building would be provided with electricity, water and drainage and these would be connected to the house which sits immediately to the side of the garage. Access to the building would be via the existing drive for the house, and both would share the garden area which surrounds the house. The appeal building would not have a separate curtilage. Although the building would contain facilities for day-to-day living, it would have a close physical and functional relationship with the main dwelling. That use, as a matter of fact and degree, would not be incidental due to the provision of primary living accommodation, and thus the provisions of Part 1, Class E of the GPDO are not applicable.
13. The garage would be used for residential purposes as part and parcel of the primary use of the planning unit as a single dwellinghouse. The proposed use would be an integral part of the ordinary residential use of the dwellinghouse and, provided that the planning unit remains in single family occupation, it would not, as a matter of fact and degree, result in a material change of use in the overall character of the use of the land. As such, its proposed use for the provision of additional living space within the same planning unit as the dwellinghouse would not amount to development as defined by s55 of the Act. The development as proposed would have been lawful on the date of the application and express planning permission would not have been required.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the proposed conversion of the existing detached garage into ancillary accommodation was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the 1990 Act as amended.

S A Hanson

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 28 June 2022 the development 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed conversion of the detached garage into ancillary accommodation (not used independently from the main house) would be functionally connected to and form part and parcel of the primary use of the land as a single dwellinghouse. It would not give rise to a material change of use of the planning unit and the internal and external operations to facilitate the use would not constitute development as defined by section 55 of the Act.

Signed

S A Hanson

INSPECTOR

Date: 7 June 2023

Reference: APP/L3245/X/22/3309076

First Schedule

Proposed conversion of existing detached garage into ancillary accommodation

Second Schedule

Land at: Coppice Cottage, Knowlegate, Ludlow, Shropshire SY8 3AJ

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 use 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 7 June 2023

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

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Scale: Not to scale

