



## Appeal Decision

Site visit made on 10 March 2020

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 March 2020**

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**Appeal Ref: APP/B3030/X/19/3240641**

**The Shambles, Low Road, Besthorpe NG23 7HJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr S Atkin against the decision of Newark & Sherwood District Council.
  - The application Ref PP-08216601, dated 10 October 2019, was refused by notice dated 31 October 2019.
  - The application was made under 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
  - The development for which a certificate of lawful use or development is sought is a proposed single storey rear extension.
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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 proposed operation which is considered to be lawful.

### Procedural Matters

2. An accompanied site visit was arranged for the 10 March 2020. However, due to an error, in relation to its recording of the date of the site visit, the Council did not attend at the arranged time. Nevertheless, the appellant stated that I could access the site unaccompanied and I carried out the site visit on that basis.
3. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?
4. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

## Main Issue

5. The main issue is whether the Council's decision to refuse the grant of an LDC was well-founded.

## Reasons

6. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class A of Part 1 allows for the enlargement, improvement or other alteration of a dwellinghouse. (Class A)
7. The appellant seeks to establish that the building would be granted permission by virtue of Class A. Paragraph A.1 and A.2 set out limitations which proposals must adhere to benefit from the permitted development right. There is no dispute between the parties that the development falls to be considered under Class A. Nor is there any dispute that the development would adhere to the limitations under Class A set out at paragraph A.1 (a) through to (i) and (k). I have no reason to disagree with these findings.
8. Paragraph A.2(b) states that, in the case of a dwellinghouse on Article 2(3) land, development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
9. Schedule 1, Part 1 of the GPDO defines Article 2(3) land as, amongst other things, an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The appeal property is located within the Besthorpe Conservation Area and is thus Article 2(3) land.
10. The development would comprise a single storey extension projecting from the eastern elevation of the property. The Council states that the northern elevation of the dwelling that faces into the driveway is the principal elevation as it contains the front door which is the main entrance to the house. Therefore, it considers that the works would extend beyond a wall forming a side elevation of the original dwellinghouse and that, because of the limitation in paragraph A.2(b), it would not be permitted development.
11. The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to interpretation of the GPDO. It states that '*in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.*' It goes on to state that '*A wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall*'.
12. The appeal property appears to once have been a barn/agricultural building. Consequently, its architectural style reflects that former use and is relatively plain in that respect. It is an 'L' shape building and a gable and an elevation to

the kitchen/dining room front onto Low Road (the western gable and elevation). Low Road is the main highway serving the house. I acknowledge that the entrance door leading to the hall and stairs is within the northern elevation. However, the western gable and elevation contain a large arched, glazed opening and double doors into the kitchen/dining room. Furthermore, the western gable with its proximity to the road, arched opening, decorative eaves and gable acts as a focal point to the property when viewed from Low Road. The name plate for the property is attached to this elevation.

13. Taking into account all of the above, I consider that the western gable and elevation can reasonably be considered to be the principal elevation and front of the dwelling. The corollary is that the eastern elevation should be regarded as the rear elevation. Consequently, I find that, on the balance of probabilities, the eastern elevation does not constitute a side elevation of the original dwellinghouse. In turn, the development would not fail to meet the limitation under Paragraph A.2(b).
14. In the absence of any evidence that the dwelling would fail to meet any other limitation under Class A, I find that the development subject of the LDC application would constitute the enlargement of a dwellinghouse for which development is permitted under Article 3, Schedule 2, Part 1 of the GPDO.

### **Conclusion**

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension 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.

*D. Boffin*

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

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**IT IS HEREBY CERTIFIED** that on 10 October 2019 the operations 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building operations would be development permitted under the provisions of Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

*D. Boffin*

Inspector

Date: 26 March 2020

Reference: APP/B3030/X/19/3240641

### **First Schedule**

Single storey rear extension as shown on the drawing No: 80/19/02/B

### **Second Schedule**

Land at The Shambles, Low Road, Besthorpe NG23 7HJ

## 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 /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, 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 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: 26 March 2020

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Scale: Not to Scale

