
Appeal Decision

Site visit made on 12 July 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 July 2016

Appeal Ref: APP/B9506/X/16/3141773

4 Fernside Cottages, Hyde, Fordingbridge, Hants, SP6 2QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Peter Gurd against the decision of New Forest National Park Authority to refuse to grant a certificate of lawful use or development (LDC).
- The application Ref. 15/00743, dated 25 September 2015, was refused by notice dated 18 December 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a LDC is sought is the construction of a vehicular access to a domestic property.

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Decision.

Application for costs

1. An application for costs was made by Mr Peter Gurd against New Forest National Park Authority. This application is the subject of a separate Decision.

The Authority's decision

2. The copy of the Authority's decision that I have been provided with appears to have some words missing at the First Schedule which runs over from the first to second page. However there is no doubt that the decision relates to the application proposal described above. The reason given for the decision appears to comprise of two paragraphs. However the officer's delegated report heads the second paragraph as an informative which is different from the way it is set out in the actual decision. This would suggest that the matter covered is for information only and not a reason in law for refusing the application for the LDC. Nevertheless as both parties have made written submissions on this paragraph I will deal with this in my reasoning.

Reasons

3. Nos. 1-4 Fernside Cottages comprise a terrace of 4 houses. The proposal concerns the creation of a point of vehicular access from a lane (Gorley Lynch) which is to the west of these properties, adjacent to the boundary with April Cottage to the north. The proposal is to remove about 5m of the frontage hedge to create an access to a proposed drive and turning area serving No.4. The details of boundary treatment, gates and surface materials are shown on an unnumbered plan that accompanied the application.
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4. There is agreement between the parties that the Class B of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) (Order) (GPDO) 2015 is the relevant starting point to consider. This stipulates that "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)" is permitted development. The lane from which access would be derived is neither a trunk nor classified road. The question to address therefore is whether the access is required in connection with development permitted by another Class other than Class A of Part 2.
5. The appellant's agent argues that as the access is required in connection with a driveway and turning area that the relevant class that applies is Class F of Part 1 - "hard surfaces incidental to the enjoyment of a dwellinghouse". I have no reason to doubt that the proposal includes hard surfaces, namely the drive and turning area, which are required for purposes incidental to the enjoyment of a dwellinghouse, that is No.4 Fernside Cottages. The Authority assert that this Class cannot be relied upon because the land in question was not historically within the curtilage of one dwelling (No.4) but has been created by the amalgamation of land from the rear gardens of 1,2 and 3 Fernside Cottages as well as No.4. They assert that this does not meet the terms of paragraph (b) of Class F.
6. On my inspection I noted that the strip of land in question behind Nos.1-3 is contiguous with the garden of No.4 and is in use in connection therewith. It is fenced off and separated from the rear garden of Nos.1-3 by fences and the back wall of a shed at the rear end of the garden of No.2. Consequently it is already within the domestic curtilage of No.4 and was as I understand it in use as such when the application for the LDC was made. So the requirements of paragraph (a) of Class F were met at that date.
7. The appellant's agent has also explained that should it be relevant the land in question has been in the ownership of the appellant's family since the 1950's and has not been recently acquired specifically to provide the driveway. Even if the land was previously part of the rear gardens of Nos.1-3 the amalgamation into the garden of No.4 would not amount to a material change of use as it remains garden land and so is not unlawful. Therefore the restriction on exercising permitted development rights set out in Article 3(5) of the GPDO does not apply.
8. For these reasons I consider that the Authority's argument that the proposal does not satisfy the requirements of Class B of Part 2 and by association Class F of Part 1 of the GPDO are without substance and unconvincing. An examination of the facts should have led to the conclusion that the proposed development is lawful by virtue of the permitted development rights conveyed by the Order.
9. The second paragraph of the decision points out that as the access involves crossing land within a Site of Special Scientific Interest that prior consent of Natural England is required in accordance with Section 28E of the Wildlife and Countryside Act 1981 before any permitted development rights that might apply could be exercised. This is not a reason for withholding a LDC as it relates to a separate area of law and as the agent argues does not affect the

lawfulness of the development under the planning legislation only what may be necessary to implement the development having regard to other legislation.

10. Moreover the response of the Authority to the costs application, which will be dealt with separately, specifically states that this point "did not form part of the reason for the Authority's refusal of the Certificate". This being the case it is not clear why it is mentioned at some length in paragraph 4.5 of the Authority's "Written Statement" on the appeal with the concluding comment "No evidence of consent from Natural England has been provided with this application and the burden of proof lies firmly with the applicant". This wording is not consistent with the later comment at the costs application stage and tends to suggest that this was indeed another reason for withholding the LDC. At the very least there is ambiguity and inconsistency in the documentation provided by the Authority which suggests there was uncertainty about the significance of this matter as a determining factor. Nevertheless for the reasons set out above and as now confirmed by the Authority it is not a legitimate reason for refusal and therefore cannot be used as a ground for withholding the issue of the LDC.
11. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a LDC in respect of the construction of a vehicular access to a domestic property 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 as amended.

Decision

12. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the proposed operation which is considered to be lawful.

NP Freeman

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 25 September 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on Plan A 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 development proposed comes within the terms of Class B of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) (Order) (GPDO) 2015.

Signed:

N P Freeman
Inspector

Date: **15 July 2016**

Reference: APP/B9506/X/16/3141773

First Schedule:

The construction of a vehicular access to a domestic property as shown on the plans submitted with the application.

Second Schedule:

Land at 4 Fernside Cottages, Hyde, Fordingbridge, Hants, SP6 2QF.

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 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 1990 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 A. Any operation which is materially different from that described and shown on the submitted plans, 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 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 A

This is the plan referred to in the Lawful Development Certificate dated: **15 July 2016**

by **Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

Land at: 4 Fernside Cottages, Hyde, Fordingbridge, Hants, SP6 2QF

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