

## Appeal Decision

Site visit made on 7 March 2016

**by Sara Morgan LLB (Hons) MA Solicitor**

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

**Decision date: 22 March 2016**

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**Appeal Ref: APP/B9506/X/15/3135899**

**Mousehole, The Drove, Forest Road, Nomansland, Hampshire SP5 2BP**

- 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 Chris Monckton against the decision of New Forest National Park Authority.
  - The application Ref 15/00575, dated 21 July 2015, was refused by notice dated 16 September 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 certificate of lawful use or development is sought is erection of porch, window alteration, single story rear extension and garden room.
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### Decision

1. The appeal is allowed in respect of the erection of porch and window alteration, and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.
2. The appeal is dismissed in respect of the single story rear extension and garden room.

### Main Issue

3. The main issue is whether the development in respect of which a certificate is sought would have been lawful if it had been carried out at the date of the application. This turns on whether it would have been permitted development by virtue of Schedule 2, Part 1 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. The burden of proving relevant facts rests on the appellant, and the test of the evidence is the balance of probability.

### Reasons

5. The appeal building was originally a garage serving the adjoining property, Foxes Earth. A certificate of lawful development for the existing use of the garage as a self-contained annexe was issued on 2 June 2011. Consequently, permitted development rights exist for the carrying out of development within the building's curtilage under Part 1 of Schedule 2 to the GPDO.
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6. The Authority considers that the proposed porch and the proposed window alteration would have been permitted development if carried out at the date of the application. It is clear that the porch, which would be attached to the only entrance to the property, would fall within the parameters of Part 1, Class D, and the window alteration would not contravene any of the restrictions in Part 1 Class A, and I agree that these elements of the proposal would be lawful.
7. The appeal site is located within the New Forest National Park, which is "article 2(3) land" for the purposes of determining whether development would be permitted under Classes A and E. Whether or not the extension and garden room would be permitted development turns on whether the extension would extend beyond a wall forming a side elevation of the original dwellinghouse and so would not be permitted development by virtue of Class A.2, and whether the garden room would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse, and so would not be permitted by virtue of Class E.3.
8. The appeal building was once a garage. It is a simple rectangular building with a pitched roof. One gable wall faces east and contains two garage doors which face down the track leading to the appeal property from Forest Road. One at least of these doors appeared to have been blocked up from the inside, and it was not clear from my site visit whether the other door could still be used. The door into the property is situated on the northern elevation of the building. A letterbox was fixed to the wall immediately by the door. The largest ground floor window is also in this elevation.
9. The extension would be attached to the west wall of the property, and the garden room would be located between the west elevation of the dwelling and the boundary of the garden. The authority says that the north wall of the building is the principal elevation; the appellant argues that although the principal elevation of the property is the north elevation, it is not the principal elevation which determines the other elevations but the front elevation. The appellant argues that the front elevation is the one containing the garage doors.
10. There is no definition of the term "side elevation" in the GPDO. The Technical Guidance *Permitted development for householders*<sup>1</sup> gives guidance on what is a "principal elevation" for the purposes of the GPDO. It states that in most cases, the principal elevation will be the part of the house which fronts the main highway serving the house and will usually contain the main architectural features, such as main bay windows or porch serving the main entrance to the house. It states that usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. The Technical Guidance goes on to advise 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.
11. When the building was a garage, its front elevation was the eastern one containing the garage doors. However, both paragraphs A.2 and E.3 refer not to the "original building" but the "original dwellinghouse". That means that it is not the situation when the building was used as a garage which must be taken into account, but the situation when it became a dwellinghouse.

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<sup>1</sup> Updated by the Department for Communities and Local Government in April 2014.

12. Now that the building has been converted into a dwelling, I consider that the front elevation is the elevation containing the door and windows. This is the elevation which contains the main architectural features, and it is the elevation through which the dwellinghouse is entered – through what would be regarded as the “front door”. This elevation has a creeper over the wall, and there are plants outside the door. These are all the hallmarks of a front elevation.
13. Anyone approaching the building will come from Forest Road, along the trackway, and be faced with the gable end of the building and the garage doors. However, just because this is the first elevation to be seen that does not mean it is the front. It is not unusual, particularly in rural areas, for houses to be sited at right angles to the public highway and not to face or front the highway. That does not make the elevation which is first seen on the approach to the dwelling its front elevation.
14. The appellant has drawn attention to various references in applications, committee reports and one Inspector’s decision to the western elevation being the “rear” elevation. However, in none of those cases was the specific issue, what is the side elevation of this building for the purposes of the GPDO, being considered. They do not therefore persuade me that the northern elevation is not the front elevation of this property.
15. The northern elevation is therefore the front of the building, and the western elevation, to which the proposed extension would be attached and beyond which the garden room would lie, would be the side elevation. Consequently, the extension and garden room would not be permitted development.
16. For the reasons given above I conclude, on the evidence now available, that insofar as the Council’s refusal to grant a certificate of lawful use or development related to the rear extension and garden room, it was well-founded and that the appeal should fail in part. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended with regard to these elements of the development.
17. I also conclude that insofar as the Council’s refusal to grant a certificate of lawful use or development related to the erection of porch and window alteration, it was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended with regard to the porch and window alteration.

*Sara Morgan*

INSPECTOR

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## 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

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**IT IS HEREBY CERTIFIED** that on 21 July 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 erection of the porch and window alteration shown on the plans submitted with the application would, at the date of the application, have been permitted development by virtue of article 3 of, and Schedule 2, Part 1, Class A to, the Town and Country Planning (General Permitted Development) Order 2015.

Signed

*Sara Morgan*  
INSPECTOR

Date **22 March 2016**  
Reference: APP/B9506/X/15/3135899

### ***First Schedule***

Erection of porch and window alteration as described in application reference 15/00575 dated 21 July 2015 and the plans submitted therewith.

### ***Second Schedule***

Land at Mousehole, The Drove, Forest Road, Nomansland, Hampshire SP5 2BP

## 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.

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## Plan

This is the plan referred to in the Lawful Development Certificate dated: **22 March 2016**

**by Sara Morgan LLB (Hons) MA Solicitor**

**Land at: Mousehole, The Drove, Forest Road, Nomansland, Hampshire SP5 2BP**

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**Scale: DO NOT SCALE**

