
Appeal Decision

Site visit made on 12 December 2016

by D E Morden MRTPI

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

Decision date: 9 January 2017

Appeal Ref: APP/D1590/X/16/3155648

59 & 61 East Street, Southend-on-Sea, Essex, SS2 6LQ

- 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 Essex County Preservation Trust against the decision of Southend-on-Sea Borough Council.
- The application Ref 16/00383/CLP, dated 7 March 2016, was refused by notice dated 26 May 2016.
- 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 not set out on the application form or in the accompanying letter submitted with the application.

Summary Decision: 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.

Application for costs

1. An application for costs was made by the appellant against Southend-on-Sea Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

2. As set out in the fifth bullet point above there was no clear description of what the appellant was applying for, either in the appropriate section of the application form (which simply referred to a letter) or in the accompanying letter which the appellant confirmed after the site visit was the letter dated 19 February 2016. That letter is simply not clear about the extent of what the appellant intended to do; a point accepted at the site visit when it was admitted that the 19 February 2016 letter on the case file was rather vague.
3. The Council's decision notice describes the development proposed as 'Single storey rear extension, replace windows and remove chimney breast at 59 and 61 East Street ...'. The appellant considers that extension is the wrong description and that what is proposed is repairs and improvements but I shall deal with that in considering the issues in the scheme before me.

Reasoning

4. There are clearly three elements to the development (that is agreed by the parties) and I shall consider them separately – firstly, the removal of the

chimney breast ; secondly, the replacement of the windows and lastly the works to put back (with alterations to the roof design) the single storey element on the rear of each property.

5. Regarding the removal of the chimney breast on the party wall of the rearward projection the Council confirmed that is an alteration that satisfies the requirements of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), Schedule 2, Part 1, Class G, which deals with chimneys, flues etc on a dwelling-house. I agree that it would be lawful to remove the chimney breast without the need to obtain planning permission.
6. Turning to the replacement of the windows in the properties, this falls within Class A which permits the 'improvement or other alteration of a dwelling-house' and the development satisfies all the restrictions and conditions of Class A including those relevant to a Conservation Area. The disagreement between the parties only concerns the third element of the proposal which is putting back/repairing the single storey element on the rear of each property.
7. In short the Council's view is that what is proposed is the erection of a single storey extension on the rear of each property. If that is correct it is not disputed that the extension would exceed the height and depth limits that apply under Class A. The appellant considers that what is involved is simply repairs and improvements and no planning permission is required.
8. At the date of the LDC application (the relevant date) the situation on the two properties was rather different. At 61 the rearward projection was almost completely intact including both one half of the ridged roof shared by the two properties and the lean to roof on the back. There were no doors on the back but all internal walls were still intact.
9. At 59 however there was not so much left of that part of the building. What remained apart from the party wall between the two properties were two parts of original walls of the rearward projection. There was one on the side about twelve brick courses high (plus a small window sill) and about one third to half of the length of that outside wall. The other part wall was of a similar height and was the wall between the ridged roof section and the lean to section behind it – an internal wall in effect.
10. In the Town and Country Planning Act 1990, as amended (the Act), section 55(2) sets out that the certain operations shall not be taken to involve the development of land. In subparagraph (a) of s55(2) it lists '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'. Clearly these are not works that could fall within 55(2)(a)(i).
11. Works for the maintenance and improvement (which is what is happening here) will sometimes include the partial demolition of the old structure and its replacement with newly built walls and/or roofs and other features. In this instance the rearward projection at number 61 was intact in so far as the roof and external walls were concerned; it was just doors and windows that were missing. That at number 59 was not so intact with just the high party wall and a lower part of the opposite side wall plus part of the internal wall still in place.

12. The Council relied on its delegated report for its representations which simply looked at the proposal as an extension on the rear of each building and whether or not is complied with the restrictions in Class A of the GPDO. It did not consider the question of whether or not the works proposed were works of repair and improvement and did not, therefore, constitute development under s55 of the Act.
13. The footprint will remain the same so there is no enlargement involved and there is a minimal increase in the volume of the roof that is brought about by replacing the lean to roof at the rear with a continuation of the ridged roof at exactly the same height as it was before. The windows on the two outside walls (one on each property) remain exactly the same with window openings in the same places and the doors on the rear are to be replaced with 'blank' window indents (as happened with the similar works to numbers 69 and 71 on the other side of the access road to the school).
14. The roof where the ridged roof will replace the old lean to roof will look slightly different as will the removal of the two doors in each rear elevation and their replacement with a blank window indent. In my view, however, looking at each building as a whole, the works proposed will not materially affect the external appearance of either building.
15. It appeared that the buildings may have been in the rather derelict state I saw them in for some considerable time. However, there is nothing in s55(2) that would support an argument that what is proposed to happen to number 59 should be regarded as an extension just because the previous rear single storey part of the building had been partly demolished for some considerable period. It is a matter of judgement as to whether the works undertaken at whatever point that occurs fall within the definition in s55(2)(a)(ii). Whilst what is taking place here may be close to a complete rebuild of the single storey rear element to number 59 that does not, bearing in mind what is proposed here, prevent it being part of a scheme of repairs and improvement to the dwelling as a whole.

Conclusion

16. Taking all the above factors into account I conclude that what is proposed here are works falling within s55(2)(a) which by definition do not involve the development of land and may, therefore, be undertaken without having to apply for planning permission. I will vary the description contained in the Council's decision notice in the certificate to reflect what I have determined is taking place.

D E Morden

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 7 March 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 detailed operations shown on the plans attached at Appendix A to this Certificate constitute 'the carrying out for the maintenance, improvement or other alteration of any building, of works which do not materially affect the external appearance of the building.' As such the operations, by virtue of s55(2)(a)(ii) of the Act, do not involve the development of land.

D E Morden

Inspector

First Schedule

Remove chimney breast, replace windows and carry out works of maintenance, repair and improvement.

Second Schedule

Land at 59 and 61 East Street, Southend-on-Sea, Essex, SS2 6LQ

Decision Date: **9 January 2017**

Reference: APP/D1590/X/16/3155648

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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: **9 January 2017**

by **D E Morden MRTPI**

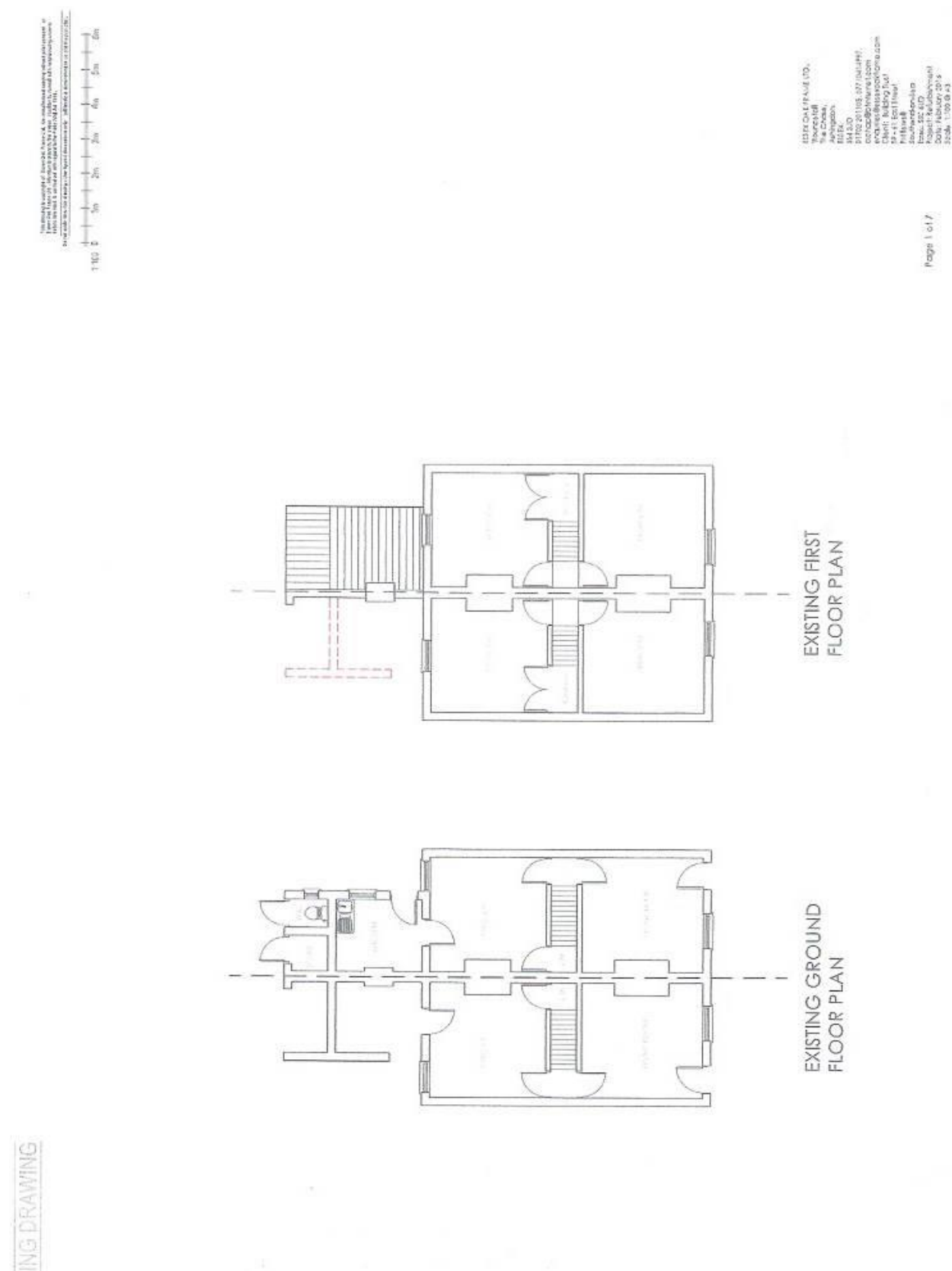
Land at: 59 and 61 East Street, Southend-on-Sea, Essex, SS2 6LQ

Reference: APP/D1590/X/16/3155648

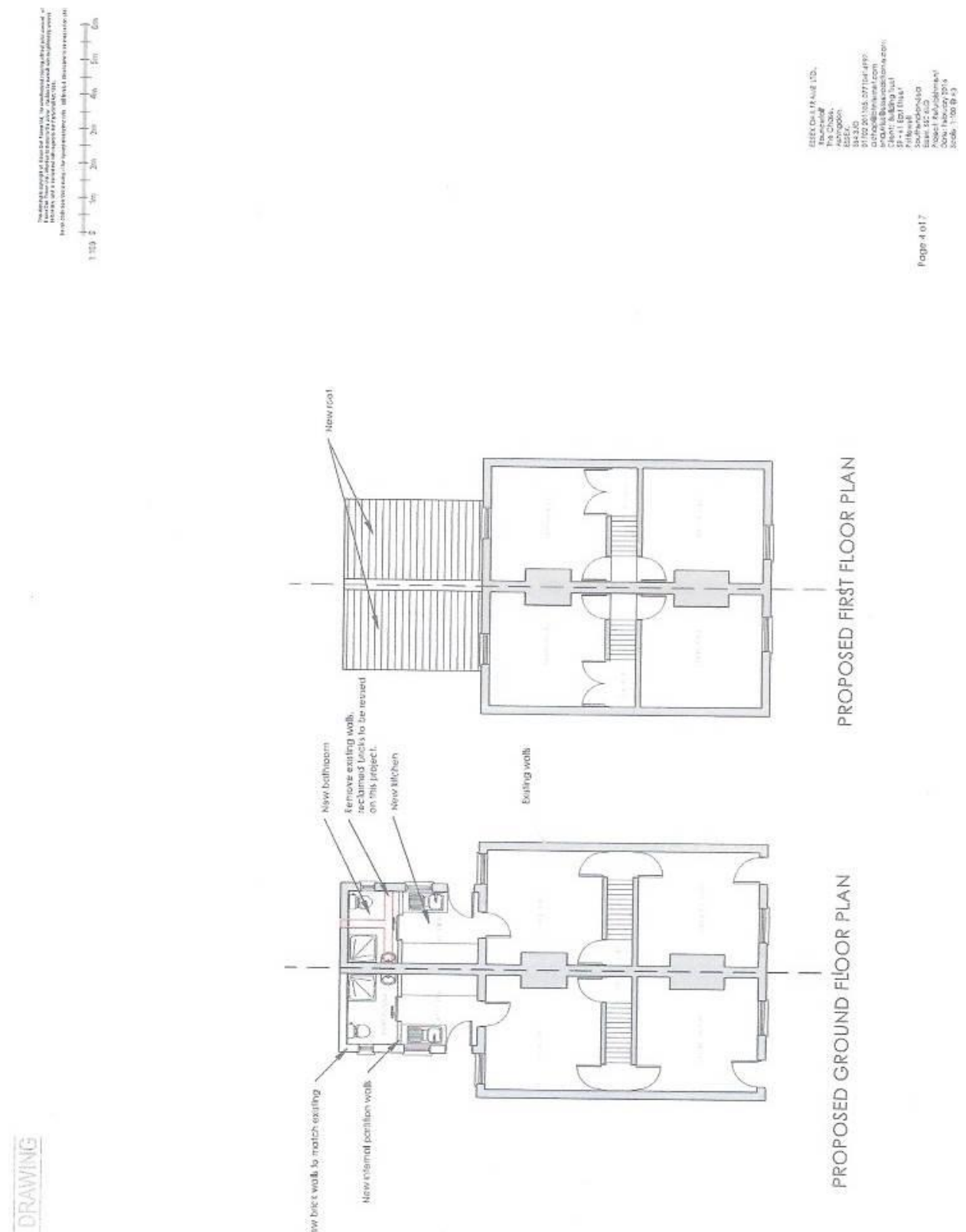
Scale: 1:500



APPENDIX A - APP/D1590/X/16/3155648



APPENDIX A - APP/D1590/X/16/3155648



APPENDIX A - APP/D1590/X/16/3155648

