
Appeal Decision

Site visit made on 5 July 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 27 July 2017

Appeal Ref : APP/L5810/X/16/3164343

Land at 11 Church Street, Hampton, TW12 2EB.

- 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 lawful development certificate by the Council of the London Borough of Richmond upon Thames dated 16 November 2016.
- The appeal is made by Mrs Alison Cheers.
- The application ref DC/PEW/16/3758/PS192 was dated 22 September 2016.
- The application was made under section 192 (1) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is conversion of garage and 4m deep rear extension.

Summary of Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Application for costs

1. The Appellant has made an application for costs against the Council and this is the subject of a separate decision.

Preliminary Matter

2. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The property comprises a two storey detached building. It is located in the Hampton Village Conservation Area. It has an off street car space and there is uncontrolled parking in the vicinity. The property includes a kitchen, sitting room, dining room, bathroom on the ground floor and three bedrooms

and a bathroom upstairs, one of which is en suite. The LDC concerns the garage attached to the property and proposed extension.

5. Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) sets out permitted development rights for the enlargement, improvement or other alteration of a house. Article 3 (5) of the GPDO provides that permission granted by Schedule 2 does not apply if the existing use is unlawful.
6. There is no dispute that the lawful use of the property is a dwellinghouse. The issue in dispute between the parties is whether at the time of the application the appeal site was being used as a dwellinghouse. There is no dispute between the parties that in all other respects Class A is satisfied and I have no reason to conclude otherwise.
7. I have applied the established test for defining a dwellinghouse as set out in the *Gravesham* case.¹ I find as a matter of fact and degree in the particular circumstances of this case that the building affords the facilities required for day to day existence including living, sleeping and eating space, kitchen, bathroom and wc. It has all the attributes of a single private dwellinghouse.
8. At the time of the application the property was being used as holiday accommodation. The Council argues that there had been a material change of use from a dwellinghouse to a guest house or serviced holiday let.
9. The Appellant's evidence is that she does not reside on the premises and there is no staff presence other than to greet holiday makers on arrival. There is nothing before me to cast doubt on that account and therefore I am not persuaded on the evidence that the use is that of a guest house.
10. Whether use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use is a question of fact and degree in each case and the conclusion will depend on the particular characteristics of use as holiday accommodation.
11. I have considered whether the use for holiday accommodation has materially changed the character of use from a planning perspective and taken into account caselaw drawn to my attention.
12. I have no reason to doubt the Appellant's description of the letting of the property. She explains that the property is let out for short periods of time (3 days to 2 weeks) to families who utilise the self contained facilities and I note the Quality in Tourism description of the property as self catering. The Appellant states that she greets guests on arrival but unless there is an emergency makes no further appearance. No meals or cleaning services during stays are provided (other than the provision of clean towels at the start of a stay).
13. I find on the evidence before me that the number of holiday guests at any one time is likely to be no greater than the number who might be living at the property if it was occupied by a permanent household. It is likely to be occupied by groups of no more than 6 people and that during their stay they

¹ *Gravesham v SSE* (1984) P&CR 142

are likely to constitute a single household. The comings and goings associated with the holiday use is unlikely to be materially different from that of a single household or other C3 use. I note that council tax is paid as a dwellinghouse and that there are no neighbour complaints before me and no evidence of noise or disturbance or impact on highway safety.

14. The Council refer to section 25 of the Greater London Council (General Powers) Act 1973 (the 1973 Act). The 1973 Act brings the definition of change of residential premises to temporary sleeping accommodation within the definition of development. They rely on the availability of the property as shown in an online booking site to assert that the property is likely to be used as temporary sleeping accommodation for more than 90 nights in the same calendar year. But that evidence source is not persuasive as it does not provide evidence of actual occupancy and there is nothing before me to cast doubt on the Appellant's explanation that dates are blocked out to restrict availability. I have also taken into account the evidence before me in the form of a confirmed booking schedule which suggests occupancy does not exceed the 90 day level. I am therefore not persuaded on the evidence before me that as a matter of fact and degree the use of the property as temporary accommodation for the purposes of the 1973 Act has occurred.
15. I conclude that on balance as a matter of fact and degree in the particular circumstances of this case it would be reasonable to conclude that no material change of use from the lawful use of the appeal site as a dwellinghouse has occurred. It therefore follows that Class A of the GPDO is met and the proposed works benefit from permitted development rights and do not require planning permission.
16. For the reasons given above I conclude on the evidence now available, that the Council's refusal to grant a LDC in respect of the proposed conversion of garage and 4m deep rear extension was not well-founded, and the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.
17. The Council proposes a set of conditions in the event the appeal is allowed. But the suggested conditions will apply by virtue of Class A of the GPDO and therefore I do not consider it necessary to repeat them.

Formal Decision

18. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed works which are considered to be lawful.

S. Prail

Inspector

LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by the Planning and
Compensation Act 1991)



IT IS HEREBY CERTIFIED that on 22 September 2016 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 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The operations described in the first schedule would be permitted development by virtue of Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

The development does not contravene the requirements of any enforcement notice in force.

S. Prail

INSPECTOR

Date: 27 July 2017

Reference: APP/ APP/L5810/X/16/3164343

First Schedule

The conversion of the garage and 4m deep rear extension in accordance with drawing numbers 000, 001, 002, 003, 004 received on 22 September 2016.

Second Schedule

Land at 11 Church Street, Hampton, TW12 2EB

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, would not have been 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. 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 operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 July 2017

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Not to Scale

