
Appeal Decision

Site visit made on 25 July 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 21 August 2017

Appeal Ref: APP/X0360/X/17/3174006

4 Holmbury Avenue, Crowthorne, RG45 6TQ

- 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 Mrs Rachel Masey against the decision of Wokingham Borough Council.
 - The application Ref 170247, dated 26 January 2017, was refused by notice dated 10 April 2017.
 - 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 the conversion of existing garage to study and utility room.
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Decision: The appeal is dismissed

Application for costs

1. An application for costs was made by Wokingham Borough Council against Mrs Rachel Masey. This application is the subject of a separate Decision.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. The appeal property is a detached two-storey house located on a residential estate built in the 1980's. The planning permission for the estate was in two parts: an outline planning application, followed by a reserved matters application. The outline planning permission, Council Ref: 19887, was subject to a number of conditions. These conditions were not varied by the reserved matters permission, and accordingly those conditions still bite.

4. One of the conditions imposed on the outline planning permission Ref: 19887 was Condition 6 which, in part, states that:

Any garage erected on the site shall be used as a domestic garage only and shall not be used for business purposes nor for any other purpose without the prior permission of the district planning authority.

5. The appeal property features an integral garage constructed as part of the original dwelling. This garage is caught by Condition 6 and, specifically, by the requirement that it shall only be used as a domestic garage only not for any other purpose without the prior permission of the district planning authority. It follows that, by reason of this condition, the proposed conversion of this garage to a study and utility room requires the express permission of the Council. Accordingly, the development proposed would not have been lawful on the date on which the application was made.
6. The appellant points out that a certificate of lawful use or development for the conversion of a garage has been issued by the Council in relation to another property on this estate. The Council concedes that this is indeed the case, but explains that the issue of the certificate in relation to the property at 8 Leith Close was an error. As indicated above, my decision must be based on the facts of this particular case. Consequently, the fact that the Council has, by its own admission, made an error in relation to the property at 8 Leith Close can have no bearing on my decision in this case.
7. The appellant also points out that there is another property close to her where the garage has been converted without the benefit of either a certificate of lawful use or development, or a planning permission. I have not been provided with any details in relation to that property. Nevertheless, whatever those circumstances might be, they can have no bearing on my decision in this case, which must be determined on the basis of the specific circumstances pertaining to this site.
8. As part of the original application form for the certificate of lawful use or development, the appellant reproduces pre-application advice that she received from a Council officer. In the event, that advice was clearly incorrect. However, pre-application advice by officers is not binding upon the Council. Similarly, I must only have regard to the formal decision of the Council which, for the reasons set above, I find was well founded.

Conclusion

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of existing garage to study and utility room at 4 Holmbury Avenue, Crowthorne, RG45 6TQ was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Paul Freer

INSPECTOR