

Appeal Decision

Site visit made on 12 April 2018

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

an Inspector appointed by the Secretary of State

Decision date: 24 April 2018

Appeal Ref: APP/Q1445/X/17/3180190

22 Sadler Way, Brighton, BN2 5PL

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr William Coppock against Brighton & Hove City Council.
- The application is dated 29 January 2017.
- The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is proposed change of use of a detached garage from the parking of vehicles to use as two bedrooms, including creation of windows and the blocking up of apertures.

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

Preliminary matters

1. For the avoidance of doubt, the planning merits of any future operations are not relevant to this appeal for a lawful development certificate (LDC). My decision rests on the facts of the case and relevant planning law and judicial authority.
2. In any application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
3. At the time of my site visit the change of use had been implemented. But I shall determine this appeal based on the proposal set out in the application.

Main Issue

4. I consider that the main issue is whether if the Council had refused the application their refusal would have been well founded.

Reasons

5. The appeal is against the non-determination of the application for a LDC within the prescribed period. In its submissions the Council says that it does not oppose the application.
6. Section 55(2)(d) of the Town and Country Planning Act 1990 as amended, provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse shall not be taken (for the purposes of the Act) to involve development.

7. The appeal site is a semi-detached house at the end of a residential cul-de-sac. A double garage sits within the curtilage of the main dwellinghouse in the rear garden accessed via a private driveway running along the boundary of the site. The application the subject of this appeal is for the change of use of the garage to use as two bedrooms each with ensuite bathroom facilities and its own access. No kitchen facilities are proposed. The Appellant says that the rooms would be used for visitors to the main dwellinghouse and there is nothing before me to cast doubt on this. Use of such a garage for additional sleeping accommodation would be a use incidental to the enjoyment of the dwellinghouse.
8. Planning permission (ref BH78/0809) has been granted for a replacement garage on the site. Condition 3 of that permission states that 'the garage shall be used only as appurtenant to a private dwelling and for no commercial use'. The proposal before me does not breach that condition.
9. I conclude as a matter of fact and degree that the proposed use would not comprise development requiring planning permission.
10. The creation of windows and the blocking up of apertures are minor and facilitate the change of use. The parties agree that they do not comprise development and I see no reason to disagree.
11. For the reasons given above, I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the proposed change of use of detached garage from the parking of vehicles to use as two bedrooms, including the creation of windows and the blocking up of apertures, 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.

Formal Decision

12. 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 29 January 2017 the use 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 was 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 not comprise development requiring planning permission.

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

S. Prail

INSPECTOR

Date: 24 April 2018

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First Schedule

The change of use of a detached garage from the parking of vehicles to use as two bedrooms, including creation of windows and the blocking up of apertures as shown on drawings submitted with the application dated 28 January 2017.

Second Schedule

Land at 22 Sadler Way, Brighton, BN2 5PL.

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. 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.
3. 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.
4. 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: 24 April 2018

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Land at: 22 Sadler Way, Brighton, BN2 5PL.

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Not to Scale

