
Appeal Decision

Site visit made on 11 April 2018

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2018

Appeal Ref: APP/P5870/X/17/3180171
15 Lavender Road, Carshalton, SM5 3EF

- 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 Matthew David against the decision of the Council of the London Borough of Sutton.
 - The application Ref D2016/76081/CPU, dated 15 December 2016, was refused by notice dated 10 February 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 a single storey 3.8m rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing proposed operation which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Matthew David against the Council of the London Borough of Sutton. This is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed extension complied with the terms and conditions of planning permission granted under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) such that it would have been lawful if instituted or begun on the date of the Lawful Development Certificate (LDC) application.

Reasons

4. When I carried out my site visit, a single storey rear extension had been constructed and from what I saw (which did not include an internal inspection) was largely completed. I will be assessing this appeal on the basis of what was proposed at the time of application rather than what I saw on site, although the constructed extension appeared to be very similar.
5. Planning permission is granted under Article 3, Schedule 2, Part 1, Class A of the GPDO for the enlargement, improvement or other alteration of a dwellinghouse, subject to conditions and limitations. Paragraph A.1(f)(i) provides that subject to A.1(g), such development is not permitted if the

- enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3m where the house is not detached – as per the appeal property.
6. Paragraph A.1(g) increases the permitted size of such single storey rear extensions to 6m until 30th May 2019¹. Paragraph A.4 of the GPDO then sets out conditions which apply to development that is permitted by Class A and exceeds the limits in paragraph A.1(f) but is within the parameters set out in paragraph A.1(g). The appeal extension would fall into this category, since it would be 3.8m deep.
 7. Paragraphs A.4(2) to A.4(9) stipulate that the developer in cases such as this must apply to the local planning authority (LPA) for a determination as to whether their prior approval is required for the development. The appellant made such an application (ref: D2016/75747/EXT) and it was approved by the Council on 13 December 2016, 2 days prior to the date of the LDC application.
 8. The Council suggests that the appeal extension could not have been lawfully instituted or begun on the date of the LDC application because the appellant had not complied with the requirements of A.4(11), (13), (14) and (15). However, A.4(11) requires the permitted development to be carried out in accordance with the approved plans, while A.4(13) to (15) relate to the completion of the works. Plainly, the appeal extension would need to be begun before any of those conditions could be complied with.
 9. Most classes of development permitted by the GPDO are subject to conditions, whether these include requirements for prior approval applications or not. All development permitted by Class A is subject to conditions under paragraph A.3 relating to materials, windows and roof pitch. Development which is permitted development may commence in accordance with the GPDO whether or not a LDC is applied for with plans showing conformity with such conditions. If development commences or is completed in conflict with such conditions, it is then open to the LPA to take enforcement action.
 10. The only pre-commencement condition imposed on development subject to A.1(g) is to comply with the prior approval procedure. Paragraph A.4(10) provides that such development must not begin before the occurrence of specified events including (b) the receipt by the developer from the LPA of a written notice giving their prior approval. Since the appellant received such a notice from the Council two days beforehand, it follows that the proposed extension could have been instituted or begun with the benefit of PP on the date that the LDC application was made.
 11. For the reasons given above, I conclude that the proposed extension complied with the terms and conditions of planning permission granted under Article 3 and Schedule 2, Part 1, Class A of the GPDO such that it would have been lawful if instituted or begun on the date of the LDC application. The Council's refusal to grant a certificate of lawful use or development was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A Harwood

INSPECTOR

¹ except in specified locations which are not relevant to this case

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 15 December 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

Planning permission is granted under Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the enlargement, improvement or other alteration of a dwellinghouse, subject to conditions and limitations. The proposed single storey rear extension is permitted by Class A and exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g) subject to an application for prior approval under paragraph A.4. Prior approval was granted on 13 December 2017 and so, on the date of the LDC application, the proposed single storey rear extension could have been instituted or begun with the benefit of planning permission granted by the GPDO.

Signed

A Harwood

INSPECTOR

Date 2 July 2018

Reference: APP/P5870/X/17/3180171

First Schedule

A single storey 3.8m rear extension.

Second Schedule

Land at 15 Lavender Road, Carshalton, SM5 3EF

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.



Plan

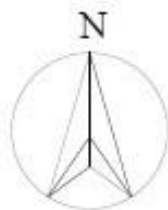
This is the plan referred to in the Lawful Development Certificate dated: 2 July 2018

by Andy Harwood CMS MSc MRTPI

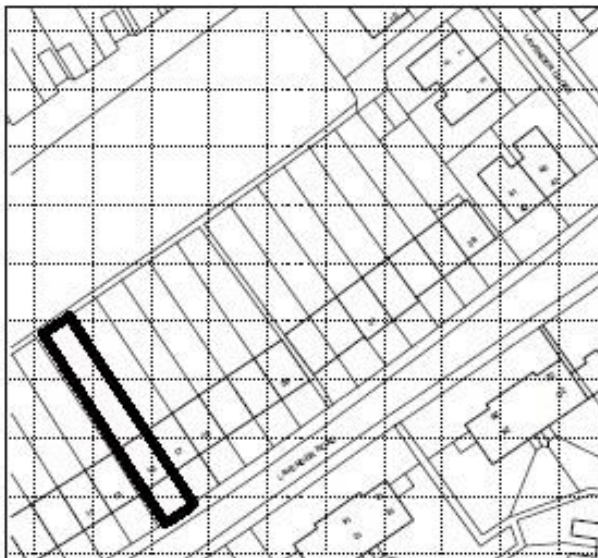
Land at: 15 Lavender Road, Carshalton, SM5 3EF

Reference: APP/P5870/X/17/3180171

Scale: 1:1250 (refer to scale bar)



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LOCATION PLAN

1:1250

