



Appeal Decision

Site visit made on 16 January 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 19 February 2019

Appeal Ref: APP/A2280/X/18/3203227

Attached garage at 1 William Road, Cuxton, Rochester ME2 1DL

- The appeal is made by Timothy Bedford under section 195 of the Town and Country Planning Act 1990 against a refusal by Medway Council to grant a lawful development certificate.
- The application Ref: MC/18/0714, dated 2 March 2018, was refused by notice dated 15 May 2018.
- The application was made under section 192(1)(a).
- The development for which the certificate is sought is described in the application as follows: -
"I plan to convert the garage to the side of my house into a small commercial bakery. The appearance from the outside will not change, only the interior. I propose to work in the bakery as and when I have orders to fill. A bread subscription service will be offered to residents and I will offer buffet and afternoon tea delivery service. No extra traffic will be visiting my house. I intend to make the bakery a valued business within the parish. Small scale machinery will be installed but noise and smell will be kept to a minimum."

Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use described in the application, which I consider would be lawful if instituted at the time of the application.

Reasons for the decision

2. The Council refused the application for the following reason: -
"Without evidence to the contrary, the applicant has not fully demonstrated in the submissions that the proposed use would not be at an intensity that would result in a material change in use of the residential dwelling. As such the LPA, therefore, considers that the proposal would result in a material change in use of the residential dwelling house and would constitute development that is not permitted by virtue of section 192 of the Town and Country Planning Act 1990 (the Act). Therefore planning permission would be required."
3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the use described in the application would be lawful if instituted at the time of the application for the certificate. The planning merits of the use described are not relevant to the appeal and there is no planning application before me.

4. Planning permission will be required in order to institute the use described if the change of use will be "material" in planning terms. The Government's online publication *Planning practice guidance* poses the question "**Do I need planning permission to home work or run a business from home?**" and advises as follows (see Paragraph 014, Reference ID:13-014-20140306): -

"Planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms, provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house). A local planning authority is responsible for deciding whether planning permission is required and will determine this on the basis of individual facts. Issues which they may consider include whether home working or a business leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations."
5. 1 William Road is a semi-detached house which occupies a corner plot at the junction with James Road. The garage is attached to the house, between the side of the house and James Road. It has a flat roof and an up-and-over door. It has been divided internally. The rear part, which contains the domestic heating appliance, would be converted to the use described by insulating it with acoustic material, fixing cladding for reasons of hygiene and installing baking equipment, including a small oven. The front part, which is the area under the up-and-over door when raised, would be used for storage.
6. Applying the Government guidance, it seems to me that the use described would not be significant enough to change the house and garage from a single dwelling use to a mixed use as a dwelling and a business. The activities proposed to be carried out in the garage would be no different to those undertaken in a typical domestic kitchen and are unlikely to result in abnormal noise or smells. The scale of the activities, at the level indicated in the application, is unlikely to lead to notable increases in traffic or to disturb neighbours. If the business grows in the future, it is possible that planning permission will be required, but in my view the appellant is entitled to a lawful development certificate for the use he has described in the application.
7. I have therefore concluded that the use described in the application would be lawful if begun at the time of the application for the certificate. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR