



Appeal Decision

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 June 2020

Appeal Ref: APP/W1525/X/19/3244020

49 Ratcliffe Gate, Beaulieu Park, Chelmsford, Essex, CM1 6AL

- 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 Menzi Fazakie against the decision of Chelmsford City Council.
 - The application Ref 19/01912/CLOPUD, dated 15 November 2019, was refused by notice dated 11 December 2019.
 - 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 "conversion of residential dwelling house garage into habitable accommodation."
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Decision

1. The appeal is dismissed.

Procedural matter

2. The appeal form gave the appellant's name as Mr Menzi Fakazi, but the LDC application was made in the name of Mr Menzi Fazakie. This was repeated in the Council's delegated report, decision notice and statement. I sought to clarify this with the appellant's agent but received no response within the given time. I have therefore assumed the name given in the LDC application is correct.

Main Issue

3. The issue is whether the Council's refusal of an LDC is well-founded.

Reasons

4. To succeed on the appeal, the appellant must prove on the balance of probability that the operations described in the application would be lawful if begun at the time of the application, namely 15 November 2019. Section 191(2) of the Town and Country Planning Act 1990 provides that, for the purposes of the Act, operations are lawful at any time if—

"(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

5. No relevant enforcement notice is in force and there is no suggestion that the proposal does not involve development. Furthermore, given that the works are merely proposed, the time limit for enforcement action has not expired. In these circumstances, the appeal could only succeed if planning permission were in place and, in this regard, the appellant refers to permitted development (PD) rights.
6. In its officer's report, the Council acknowledges that, in normal circumstances relevant PD rights exist by virtue Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Subject to conditions and limitations, these provisions grant planning permission for the *"enlargement, improvement or other alteration of a dwellinghouse."* However, Article 3(4) of the GPDO says nothing in the Order *"permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order"*.
7. On 24 May 2006, outline planning permission was granted (the outline permission) on appeal Ref APP/W1525/A/05/1192527 for a residential development, of which the appeal property forms part. That outline permission was subject to conditions, including:

"13. No development shall take place until details of garages and on-site parking areas and spaces have been submitted to and approved in writing by the local planning authority. The parking areas shall be available for use in accordance with a timetable agreed in writing with the local authority."

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification) the garages and on-site parking spaces referred to in condition 13 shall thereafter be used for no purpose other than the parking of motor vehicles."
8. In the appeal decision granting outline permission, the Inspector said conditions *"providing for car and cycle parking would be necessary for highway safety, amenity and sustainable transport reasons."* On 10 May 2007, details submitted in accordance with condition 13 above were approved under Ref 07/07256/ADOUT. In the approved drawing BP-10, the appeal property is shown to have parking provision for two vehicles, one of which is within the garage the subject of this appeal.
9. Planning permission Ref 19/01550/FUL was granted 29 October 2019 for a single storey rear extension and front porch. The Council states that, when submitted, this application included the conversion of the existing garage to habitable space, but this element was removed as a result of an objection from the Highway Authority.
10. Condition 14, referred to above, applies to the appeal property and clearly prohibits the use of the garage for anything other than the parking of motor vehicles. In accordance with Article 3(4) of the GPDO, that condition effectively removes the relevant PD rights otherwise granted by that Order.

11. The appellant says the proposed conversion of the garage would provide much needed habitable space for his family. He suggests the garage parking space is not needed and says there were no exceptional circumstances justifying the removal of PD rights, such that the restriction is grossly unfair. The Council's statement indicates there was an active planning application Ref 20/00257/FUL for the conversion of the garage to habitable space and the construction of hardstanding to the front of the property. The merits of the proposal to convert the garage to habitable space fall to be considered in the context of that application, but it is not for me to assess them.
12. There is nothing in the appellant's case to indicate that the condition on the outline permission excluding PD rights was unlawful. The GPDO would not grant planning permission for the proposal and accordingly, the appellant has not proved on the balance of probability that the operations described in the application would be lawful if begun at the time of the application.
13. 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 the residential dwelling house garage into habitable accommodation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

JA Murray

INSPECTOR