



Appeal Decision

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 July 2020

Appeal Ref: APP/M3645/X/20/3245586

Sequoia, Northdown Road, Surrey, Woldingham CR3 7AA

- 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 Tim Jacobs against the decision of Tandridge District Council.
 - The application Ref TA/2019/789, dated 18 April 2019, was refused by notice dated 14 August 2019.
 - The application was made under section 192(1)(a) and 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 existing garage as "granny annexe" and construction of detached 5 car garage.
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Decision

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

Application for costs

2. An application for costs was made by Mrs T Jacobs against Tandridge District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded. This will turn on: (i) whether the creation of a Granny Annexe would be a material change of use; and (ii) which elevation forms the principal elevation of the original dwellinghouse.

Reasons

4. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this 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. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.
5. The appellant submitted the application on the basis that the proposals would be permitted development under the Town and Country (General Permitted

Development)(England) Order 2017 and considered the proposed garage against Class E of the aforementioned Order. Sequoia comprises a substantial dwelling in spacious grounds, set back from Northdown Road. The property has been substantially altered over the years, mainly through the use of permitted development rights. The appeal scheme comprises two distinct elements (i) the conversion of an existing garage to a Granny Annexe; and (ii) the construction of a detached 5 car garage.

Granny Annexe

6. The appellant proposes to convert an outbuilding which is used as a garage and is linked to the main dwelling by a roof and archway. The Granny Annex would accommodate the appellant's Mother-in-Law, and as required a carer, and is intended to enable her to live with the family so that she can receive immediate assistance whilst retaining her independence. The annexe would have its own entrance and would contain two bedrooms each with en suite and dressing rooms, a lounge, kitchen, utility room and a library.
7. It is not disputed that the primary use of the property 'Sequoia' is that of a single dwellinghouse. S55(1) of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. S55(2) sets out that certain operations or uses of land shall not be taken for the purposes of the Act to involve development of the land, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building...
8. The Council refused the application on the basis that insufficient information had been provided to confirm if the creation of a Granny Annexe would be a material change of use. In support of its refusal, the Council has referred me to *Uttlesford DC v SSE & White* [1992] JPL 171 where it was held that even if accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling, it would be a matter of fact and degree. The Council state that no details have been provided as to who would occupy the building and in what capacity they would use the building and that as such it was not possible to come to a view.
9. The annexe would be located within the dwelling curtilage, sharing the access, parking, servicing and garden areas of the main dwellinghouse. It would have no separate curtilage. The overall planning unit would continue in occupation by the same family and whilst the appellant's Mother-in-Law currently lives alone elsewhere, this would not change. Although the annexe would contain all the facilities for day-to-day living, it would be physically and functionally linked to the main dwelling and, as a consequence, would be a use which is already taking place within the planning unit, as a matter of fact and degree.
10. Therefore, I conclude that the proposal does not amount to development as defined by section 55(1) of the Act. As such, planning permission is not required and the Granny Annexe is lawful for planning purposes.

Garage

11. Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) allows the provision

- within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such... subject to conditions. Development is not permitted by Class E if (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The Council refused the application on the basis that the proposed development would not comply with permitted development rights under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England)Order 2015 because the proposed garage would be forward of the principal elevation of the main dwellinghouse.
12. The Permitted development rights for householders: Technical Guidance (2019) defines the 'Principal elevation' in most cases as that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. 'Original' means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.
 13. The dwelling is set within a substantial plot with its principal elevation facing towards Northdown Road. The Council states that the east elevation of the building constitutes the principal elevation of the original dwellinghouse. However, no substantive evidence has been submitted to support this view and the Officer report, whilst detailing the requirements of the Act, makes no mention in its assessment as to what the principal elevation of the *original* dwellinghouse would have been.
 14. Whilst I would not always expect analysis where the principle elevation of the original dwellinghouse is obvious, for example, where limited changes have occurred at a property since its construction, I would have expected some discussion of this point in this case given the extensive changes that have taken place at the property.
 15. The appellant states that the principal elevation of the property has changed and would originally have been on the north elevation. I have been provided with a drawing, reference 1143/4/A which was submitted to the Council in support of application TA/2013/1872 which identifies the north elevation to be the front. The Council provides a detailed planning history within its Officer Report, which suggests that the 2013 is the first substantive change that has occurred at the property. I therefore consider the above drawing provided by the appellant to be representative of the original dwelling.
 16. The east elevation is identified as the 'side' elevation and the south is identified as the 'rear' elevation. The north elevation has features which are consistent with being a principal elevation. At that time, the north elevation contained the front door, porch, windows of habitable rooms, including the drawing room and breakfast room/kitchen. The east elevation, by contrast, contained features which I consider are more likely to be found in a side elevations, such as a chimney breast and the end of a hipped roof.
 17. The Council asserts that its view in this regard has been consistent through lawful certificates which have been issued under applications 2014/1843, 2015/115 and 2015/2102. However, no documentary evidence has been

provided by the Council to explain why it considers the east elevation of the *original* dwelling to be the principal elevation, particularly in light of drawing 1143/4/A submitted by the appellant. Furthermore, even if the Council has consistently held this view, I am not bound by its conclusions if there is evidence to the contrary.

18. Although the north elevation does not face the main highway serving the house, in my experience, it is not uncommon for the principal elevation of substantial dwellings in generous plots to face away from the main highway. As a matter of fact and degree, I conclude that the principal elevation of the original dwellinghouse is the north elevation of the property and thus the proposed building would not be situated on land forward of a wall forming the principle elevation of the original dwellinghouse.
19. Thus, it has been shown, on the balance of probability, that the proposed garage would be granted planning permission by the GPDO Article 3, Schedule 2, Part 1 Class E and is lawful for planning purposes.

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusals 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.

M Savage

INSPECTOR



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 18 April 2019 the use and operations 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the proposed garage would, as a whole, be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

The proposed Granny annexe (not used independently from the main house) would be part and parcel of the primary use of the land as a single dwellinghouse and would not give rise to a material change of use of the planning unit.

Signed

M Savage

Inspector

Date 8 July 2020

Reference: APP/M3645/X/20/3245586

First Schedule

Conversion of existing garage as "granny annexe" and construction of detached 5 car garage

Second Schedule

Land at Sequoia, Northdown Road, Surrey, Woldingham CR3 7AA

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: 8 July 2020

by M Savage BSc (Hons) MCD MRTPI

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Scale: NTS

