



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/D5120/X/19/3240752

56 Grosvenor Road, Belvedere, Kent DA17 5JY

- 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 Miss E Brown against the decision of the Council of the London Borough of Bexley.
- The application Ref 19/2070/LDCP, dated 20 August 2019, was refused by notice dated 6 November 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 the erection of a single storey rear extension, which would extend beyond the rear wall of the dwelling by 2.9m for which the maximum height would be 3.1m and for which the height of the eaves would be 2.6m. The total extension including previous enlargements would extend beyond the rear wall of the original dwelling by 2.9m for which the maximum height of the total.

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. I note that the appellant indicated on the appeal form that the application was made under section 191 of the Act. However, it is evident from the original application form and submitted evidence that the application was made under section 192 of the Act (proposed use or development) and it is on this basis that I have considered the appeal.
2. The description in the banner heading above is taken from the appellant's original application form, noting that the Council in their decision notice used an abbreviated version. However, under s.192 there is no implied power to modify the description of the proposed development.
3. The appellant was asked to either confirm whether they agreed or agree to the amended description used by the Council or provide the missing words from the description given on the application form. The appellant responded but was unable to clarify matters consequently, I have proceeded to determine the appeal on the basis of the description given. I am satisfied that it is possible on the basis of the given description and supporting information, to infer the nature of the application and proposed development.
4. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time

of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

5. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law. As such, the appellant's misgivings about how the Council dealt with the application have no bearing on my decision.
6. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute. Both the appellant and the Council were given an opportunity to comment on this approach and no responses were received.
7. The Council's first reason for refusal stated that the submitted floor plan shows that the extension would encroach over the boundary with the attached property, 54 Grosvenor Road and consequently will require an application for planning permission. The Council were asked to provide additional justification in respect of this reason for refusal however, no additional comments were received.

Main Issue

8. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

9. The appeal site is a mid-terrace dwelling. The proposed development involves the erection of a single storey extension to the rear which would adjoin an existing two storey projection.
10. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Article 3 Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to development within the curtilage of a dwellinghouse and grants permission for the enlargement, improvement or other alteration of a dwellinghouse.
11. The Council argued that the proposed ground floor plan shows that the extension would encroach over the boundary with the attached property, 54 Grosvenor Road. Further, that there are various inaccuracies and inconsistencies with the submitted drawings, including misplaced windows and footprints that do not match, which meant they were not able to confirm whether the proposal would accord with Schedule 2 Part 1 Class A of the GPDO. They also stated that it is not clear whether the proposed development would comply with condition A.3(a) of Schedule 2 Part 1 Class A of the GPDO.
12. In respect of the location and siting of the proposed extension, the submitted block plan, site location plan and proposed rear elevation indicate that the proposed extension would fall within the curtilage of the appeal property for the purposes of Schedule 2 Part 1 Class A of the GPDO.

13. However, the proposed ground floor plan shows that the extension would be built out from the rear of both 54 and 56 Grosvenor Road. This is a small encroachment which seems to me, given what the other plans indicate, is an oversight. Furthermore, there is no evidence to suggest that it is the appellant's intention to build out from the neighbouring dwelling, indeed the appellant confirmed on the appeal form that they do not want to build the extension in their neighbours' garden but in their own boundary. Consequently, I find that on the balance of probabilities, the proposed extension would fall within the curtilage of the appeal property for the purposes of Schedule 2 Part 1 Class A of the GPDO.
14. I note the Council's comments regarding the quality of the plans and also that the description indicates the overall height would not exceed 3.1m whereas the plans indicate the extension would be 3m at its highest point. Nevertheless, notwithstanding this discrepancy and although the plans are basic, I find there is sufficient detail to determine whether the proposed extension would constitute permitted development for the purposes of the GPDO. Furthermore, I note from the Council's officer report that notwithstanding the alleged encroachment, the Council accepted that the proposed building would comply with all other limitations set out in paragraph A.1.
15. In order to benefit from the provisions of Schedule 2 Part 1 Class A of the GPDO the proposed extension must comply with the condition at paragraph A.3.(a) that is *"the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse"*.
16. In this case whilst the submitted plans indicate the extension would be faced with brick to match the existing house, no materials are specified for the roof or windows. However, A.3.(a) is a condition within the GPDO. Consequently, if the proposed extension was not built with materials that had a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, this would constitute a breach of condition. The extension would not in those circumstances constitute permitted development and it would be open to the Council to take enforcement action.
17. Consequently, on the basis of the details before me, I am satisfied that on the balance of probabilities, the proposed extension would constitute permitted development by virtue of Schedule 2 Part 1 Class A of the GPDO.

Conclusion

18. For the reasons given above I conclude, on the basis of the evidence available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed in respect of; *the erection of a single storey rear extension, which would extend beyond the rear wall of the dwelling by 2.9m for which the maximum height would be 3.1m and for which the height of the eaves would be 2.6m. The total extension including previous enlargements would extend beyond the rear wall of the original dwelling by 2.9m for which the maximum height of the total.*
19. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

20. 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.

Felicity Thompson

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 20 August 2019 the 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:

The proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) since the development falls within Part 1 Class A of the GPDO.

Signed

Felicity Thompson

INSPECTOR

Date: 21 August 2020

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First Schedule

The erection of a single storey rear extension, which would extend beyond the rear wall of the dwelling by 2.9m for which the maximum height would be 3.1m and for which the height of the eaves would be 2.6m. The total extension including previous enlargements would extend beyond the rear wall of the original dwelling by 2.9m for which the maximum height of the total, as shown on drawings titled 'Proposed Side Elevation', 'Proposed Rear Elevation', 'Block Plan' and 'Site Location Plan' received on 20 August 2019.

Second Schedule

Land at 56 Grosvenor Road, Belvedere, Kent DA17 5JY

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: 21 August 2020

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Scale: Not to scale

