



Appeal Decision

Site visit made on 11 January 2021

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2021

Appeal Ref: APP/H1515/X/20/3256278

The Toll House, Fingrith Hall Lane, Blackmore CM4 0JN

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Peterkin against Brentwood Borough Council.
 - The application (Ref. 20/00272/S191) is dated 25 February 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a single class C3 dwelling house with detached single garage.
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Decision

1. The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matter

2. The form which was submitted to the Council is for an application under section 191 of the Town and Country Planning Act 1990 as amended (the Act) which relates to a certificate for an existing use or operation or activity. At Part 4 of the application form the applicant indicates that he is applying for a certificate for an existing use as a C3 dwelling house. However, under section 5 of the form he says that he is applying for a certificate for demolition of the existing single garage and erection of a new double garage. The latter would be an application under section 192 of the Act because it relates to a proposed operation.
3. The Council did not make a decision on the application. However, in its statement it opines that the application would have been more appropriately made under section 192 of the Act for the demolition, relocation and construction of a garage. The Council has provided its evidence on that basis.
4. In response to my request for clarification the appellant has confirmed that the application should have been under section 192(1)(b) of the Act.
5. Both parties have approached the appeal on the grounds that the issue under consideration is the demolition of a garage and the erection of a double garage, being proposed development. Consequently, no injustice would arise were I to take the same route to my decision. Were the appeal to be successful this would lead to a certificate being granted for the demolition of the existing

single garage and the erection of a new double garage under section 192 of the Act.

6. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

7. The Council did not make a decision on the application. However, it is clear from the Council's statement that had it done so the application would have been refused because in its view the proposed operations would not constitute permitted development. The main issue is, therefore, whether a decision by the Council to refuse to grant an LDC would have been well-founded.

Reasons

8. The applicant sought to establish that it would be lawful to demolish an existing garage and to construct a new double garage. The Council is of the view that this would not be lawful because the proposed development would not fall within the limitations of Schedule 2, Part 1, Class E of the Town and Country General Permitted Development (England) Order 2015 (as amended) (Class E) by reason of its position.
9. Class E sets out that the provision within the curtilage of a dwellinghouse of a building of the type proposed is not permitted development where any part of it would be situated on land forward of a wall forming the principal elevation of the original dwelling.
10. The Toll House has been much altered including the construction of a substantial dual-pitched extension to its eastern side. It is clear from the plans of this extension that the entrance to the house was changed from its southern end to the northern side. In both cases the plans show that the external door gives access to a hall and stairwell.
11. The Technical Guidance says that the principal elevation will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house and that it will be understood to be the front of the house. On this basis the principal elevation of The Toll House would have been the south elevation before the alterations were carried out. I have asked the parties to comment on this point.
12. The appellant maintains his position that the west elevation should be regarded as the principal elevation because of the way the building would have functioned when the occupiers were responsible for collecting tolls from passing travellers. He has provided photographs from the time when the house was being renovated which he considers suggest that a front door could have been facing the roadside.
13. In response to my request the Council has provided advice from its Heritage Consultant which concludes that the principal elevation of the original dwelling was to the south. This is based on historical maps and an appreciation of the

relationship between The Toll House and the route into the historic settlement of Blackmore Village which was to the north of the site.

14. On the basis of the information from the Council and the limited contrary evidence from the appellant, I conclude that the principal elevation, for the purposes of Class E, is the south elevation of The Toll House. Therefore, no part of the proposed double garage would be situated on land forward of a wall forming the principal elevation of the original dwelling.
15. The Council is not arguing that the development would fail to accord with the other criteria within Class E and it follows that in light of the evidence before me, and on the balance of probability, the proposed double garage shown on the drawings would be lawful if instituted or begun at the time of the application.

Other matters

16. The appellant's criticisms of the way in which the Council dealt with his application are a matter between him and the Council and have had no bearing on my determination of the appeal.

Conclusion

17. For the reasons given above I conclude, on the basis of the evidence available, that a decision by the Council to refuse to grant a certificate of lawful use or development would not have been well-founded and that the appeal should succeed in respect of the demolition of the existing single garage and erection of a new double garage at The Toll House, Fingrith Hall Lane, Blackmore. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

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

Sarah Dyer

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 25 February 2020 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 192 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 E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) since the development falls within Part 1 Class E of the GPDO.

Signed

Sarah Dyer

Inspector

Date: 2nd February 2021

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First Schedule

The demolition of the existing single garage and erection of a new double garage as shown on:

Site Plan Existing	Revision 1.0
Site Plan Proposed	Revision 1.0
Elevations Proposed	Revision 1.0

Second Schedule

Land at The Toll House, Fingrith Hall Lane, Blackmore CM4 0JN

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: 2nd February 2021

by Sarah Dyer BA BTP MRTPI MCMI

Land at: The Toll House, Fingrith Hall Lane, Blackmore CM4 0JN

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Scale: Not to scale

