
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/Z1510/X/20/3259433

70 Silver Street, Silver End, Witham, Essex CM8 3QF

- 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 Stuart Way against the decision of Braintree District Council.
 - The application Ref 20/00880/PLD, dated 1 June 2020, was refused by notice dated 31 July 2020.
 - 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 a single storey rear extension, outbuilding and detached garage to replace existing garage and outbuildings.
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Decision

1. The appeal is allowed in respect of the erection of an outbuilding and detached garage and attached to this decision is a certificate of lawful use or development describing the proposed operations, which are considered to be lawful.
2. The appeal is dismissed in respect of the single storey rear extension.

Preliminary Matters

3. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
4. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. “Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit.” In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

Main Issue

5. The main issue is whether the Council’s decision to refuse to grant a certificate of lawful use or development was well-founded.

Reasons

6. The appeal relates to a detached bungalow. The appellant proposes to erect a single storey rear extension, a replacement garage and a garden room with a storage area. The Council advise that there are no Article 4 Directions removing permitted development rights relating to extensions and the building is not listed. It does though lie within Silver End Conservation Area.
7. The principle point at issue is that the proposed rear extension does not accord with Schedule 2, Part 1, Class A, paragraph A.1.(j)(iii) and A.2.(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council accepts that in all other respects, the proposed extension would accord with the limitations of Class A and I see no reason to take a different view. With regard to the proposed replacement garage and new outbuilding, these fall to be considered against the various limitations of Class E of the GPDO. The Council find that in all respects both buildings would accord with all the limitations of Class E and are therefore permitted development and lawful. I see no reason to take a different view.
8. The Ministry of Housing, Communities and Local Government has published Technical Guidance (TG) entitled "Permitted development rights for householders" September 2019. This provides an explanation of the rules on permitted development for householders and I will refer to this in my reasoning. Pages 22-28 provide examples of extensions in relation to side walls.
9. Class A.1.(j)(iii) states development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwelling house, and would have a width greater than half the width of the original dwelling house. Class A.2.(b) states something similar, that if the dwellinghouse lies within a conservation area, development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
10. In respect of the appeal site, the rear wall of the dwellinghouse is not uniform as it contains an original projection which accommodates a pair of French windows with side windows in a bay arrangement. The projection comprises two side walls which rise above the height of the eaves on the dwellinghouse. There are no windows within these side walls. Between them, the rear wall of the projection is angled and contains the French windows with flanking windows. The projection has a flat roof tied into the tiled roof of the dwellinghouse. In my view, it is a substantial structure and is of significance as it extends across the full width of the lounge, the largest room in the dwellinghouse and extends that room into the garden. There is no dispute between the parties that this is an original feature of this modernist-style bungalow.
11. "Side elevation" is not defined in the GPDO but is stated within the TG to be any wall that cannot be identified as being a front wall or a rear wall. The TG further states that houses will often have more than two side elevation walls. The diagrams that follow within the TG do not show the circumstances of the current case. To my mind it is a matter of planning judgement, on the facts of a particular case, what constitutes a side elevation on any dwellinghouse, taking into account the TG.

12. The French windows within the projection are clearly rear facing and are on the rear elevation of the projection even though that elevation is angled. However, the side walls clearly face the side boundaries of the property and, in my view, there is no doubt that they are side elevations. Although the footprint enclosed by the projection area is small, in comparison to the total footprint of the dwelling house, nevertheless for the purposes of the GPDO, it results in two side elevations that must be taken into account when considering whether any proposed rear extension would be permitted development. This is because at the time of considering the application, the projection exists. Even though the appellant proposes to remove this projection to create a rectangular kitchen/dining room, its existence counts for the purposes of considering whether the proposed development would be permitted development.
13. Turning to the wording of paragraph A.1.(j) and A.2.(b), development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. I find that is the case in this proposed development as the extension would clearly extend beyond both side walls of the projection. The next relevant part of paragraph A.1.(j) is subparagraph (iii) which states an extension in this position would not be permitted development if it would have a width greater than half the width of the original dwellinghouse.
14. The full width of the property is not stated on the plans but the proposed width of the extension is stated as being 10m and this is shown to be inset marginally from the end walls of the building. It is therefore apparent that the proposed extension would be greater than half the width of the original dwellinghouse. As the proposal would not accord with either paragraph A.1.(j)(iii) or A.2.(b) of Class A, it would not be permitted development and therefore would not be lawful.
15. The appellant's statements show that he is aggrieved by the advice he received from Council officers prior to the submission of his application. However, notwithstanding his predicament, and other than disputing taking into account the rear projection, he offers no counter argument to the interpretation of the GPDO.
16. To summarise, the appellant's appeal is confined to establishing the lawfulness, or otherwise, of the proposed development at the appeal site, based on the description of the development and the information shown on the drawings. I find, for the reasons given above, that the proposed single storey rear extension would not accord with Class A of the GPDO and would therefore not be permitted development. As such, it follows it would not be lawful.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding and detached garage to replace existing garage and outbuildings was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension 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.

D Fleming

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 1 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 erection of the outbuilding and detached garage would constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 (as amended), for which planning permission is required. The dwellinghouse is substantially complete. As such, planning permission is granted by Article 3(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015, for the outbuilding and detached garage since the development falls within Class E, Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming

Inspector

Date 09 February 2021

Reference: APP/Z1510/X/20/3259433

First Schedule

Erection of outbuilding and detached garage to replace existing garage and outbuildings as shown on drawings: WAY.MAY.20C and WAY.FEB.20C.

Second Schedule

Land at 70 Silver Street, Silver End, Witham, Essex CM8 3QF

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:

by D Fleming BA (Hons) MRTPI

Land at: 70 Silver Street, Silver End, Witham, Essex CM8 3QF

Reference: APP/Z1510/X/20/3259433

Scale: not to scale

70 Silver Street CM8 3QF

