The Planning Inspectorate

Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/D1590/X/20/3260109
3 Ewan Way, Leigh-on-Sea, Essex SS9 3RA

- 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 Vladimir Saidaev against the decision of Southend-on-sea Borough Council.
- The application Ref 20/00846/CLP, dated 31 May 2020, was refused by notice dated 10 September 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 'Act').
- The development for which a certificate of lawful use or development is sought is to extend existing garage and convert into storage and office space and erect an outbuilding at the rear.

Summary decision: The appeal succeeds in part and a certificate of lawful use or development is issued for that part in the terms set out below in the Formal Decision, but otherwise the appeal fails.

Preliminary Matters

1. The purpose of an LDC application is to determine whether specified uses or operations would have been lawful on the date the application was made. The burden of proof rests with the appellant and the test of the evidence and decision is made on the balance of probabilities.

2. On the appeal form the appellant has ticked the box to indicate the appeal is against existing development under s191 of the Act. However, it is clear from the written description on the appeal form, the application form, the Council's decision notice and the submitted evidence that the appeal concerns 'proposed' development for building operations under s192(1)(b). I will make my decision on this basis.

3. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.

Main Issue

4. In this case the main issue is whether the Council's decision to refuse the LDC application was well-founded. This turns on whether the proposed development would constitute permitted development ('PD') under Class E.1(h) of Schedule 1, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO') on 31 May 2020.

Reasons

5. Class E of the GPDO sets out PD rights for 'The provision within the curtilage of the dwellinghouse of (a) any building…required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alterations of such a building or enclosure…" subject to conditions and limitations set out in paragraphs E.1, E.2, E.3 and E.4.

6. The Council's only reason to refuse the LDC application was that the extended existing garage would fail to satisfy condition E.1(h) of the GPDO because the development would include the "construction or provision of a raised platform". The Interpretation of terms used in Part 1 of the GPDO states that "raised" in relation to a platform means a "platform with a height greater than 0.3 metres". The Technical Guidance[1] gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. It clarifies that verandahs, balconies and raised platforms are not permitted under Class E.

7. It is clear from the submitted plans and photographs that there are different ground levels in the garden. The agent's photographs, appended to the Council's Statement, show that the existing garage sits on a concrete base and at the end of the existing garage there is another concrete base at a lower level on which there is a shed, rain water butt and a trellis fence. Beyond that the land falls away. The appellant's drawings do not show this additional lower base.

8. The plans annotate that the existing garage will be "rebuilt and extended". In order to re-build a longer garage to the 8.3 metres shown on the plans, a larger area of ground needs to be created at the same level as the existing garage. To do this, the base at the end of the existing garage would need to be built up to accommodate the larger base of the extended garage. The activity of building up the ground would likely involve some pre-planning, for example, to bring materials to the site, raising ground levels and re-profiling the land for the base of the extended garage. In my view these works would comprise engineering operations.

9. The proposed elevation plans clearly show the extended garage sitting on a larger concrete base above the surrounding ground, but do not show how this would be achieved. If the lower concrete base is to be built up this amounts, in my view, to the creation of a platform.

10. The Courts[2] have held that in some instances the scale of the engineering works may be so great that they are no longer part and parcel of the building operation but are a separate operation in their own right. For Class E development, the GPDO acknowledges that some engineering works are part and parcel of the building operation. For example Class E development permits the creation of a swimming pool, which includes some engineering works, and also allows works to create raised platforms, but these are limited to no more than 0.3 metres in height.

[1] Permitted development rights for householders - Technical Guidance. Published by MHCLG Sept 2019
[2] *Eatherley v Camden LBC* [2016] EWHC 3108 (Admin)

11. I now need to have regard to the height of the platform that would be created to determine if it would be raised, i.e. more than 0.3 metres in height. This is not shown on the plans but correspondence with the Council clearly indicates that a raised platform was an issue during the determination of the application and by their reckoning it would be approximately 0.65 metres at the highest point. This is considerably more than the GPDO limitation of 0.3 metres. The appellant does not refute this figure.

12. The architect has annotated the garage and outbuilding plans in detail with written dimensions, even specifying the resultant floor areas of some of the rooms that would be created. But there are no such dimensions to show how high the extended garage would sit above the surrounding garden or even spot heights relating to ground levels. From the submitted evidence it is not possible to determine this.

13. The Planning Practice Guidance[3] makes clear that the applicant (in this case the appellant) is responsible for providing sufficient information to support an LDC application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

14. Furthermore, PD limitations set out in the GPDO are expressed precisely such that something is either PD or not PD. Based on the evidence before me it has not been shown on the drawings that the raised platform of the extended garage would be less than 0.3 metres in height. It is therefore not possible to conclude that the extended garage would have benefited from PD rights when the application was made. Express planning permission is therefore required for the development.

15. The Council's officer delegated report makes it clear that the outbuilding at the bottom of the garden meets the requirements of the GPDO to benefit from PD. Taking the Council's decision as a whole it would suggest that the outbuilding is lawful, but the extended garage would not be because of the raised platform. The two buildings would be both physically and functionally separate from each other such that the two parts of the development are clearly severable. Therefore, in my view a split decision is possible and appropriate in this instance.

Other Matters

16. In his appeal statement the appellant disagrees with the need to lower the roof level to 2.5 metres, instead of the previous 2.8 metres. He may disagree, but that is not relevant. As the buildings are within 2 metres of the boundary of the curtilage of the dwelling, the height of the buildings must not exceed 2.5 metres in order to benefit from PD and not need express planning permission. This is an exact requirement of the GPDO. The plans have dimensions that clearly show that both buildings will be 2.5 metres in height. Any increase in height of the buildings would mean they would not be lawful and the Council could take enforcement action.

Conclusion

17. For the reasons given above I conclude, on the evidence available and on the balance of probabilities, that the Council's refusal to grant a certificate of

[3] Paragraph: 006 Reference ID: 17c-006-20140306

lawful use or development for the extended garage and convert it into storage and office space was well-founded. I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss this part of the appeal.

18. The outbuilding benefits from PD. Therefore the decision to refuse to grant a certificate of lawful use or development for this part was not well-founded, and I shall allow the appeal for this part.

Formal Decision

19. The appeal is dismissed with regards to extending the existing garage and converting it into storage and office space.

20. The appeal is allowed with regard to the outbuilding at the rear, and attached to this decision is a certificate of lawful use or development describing the proposed development which is considered to be lawful.

K Stephens
INSPECTOR

The Planning Inspectorate

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 31 May 2020 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto shown hatched within the land edged 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 outbuilding at the rear of 3 Ewan Way, Leigh-on-Sea, Essex SS9 3RA, as described in the statement accompanying the application, would benefit from permitted development under Part 1 of Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

K Stephens
INSPECTOR

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First Schedule

The erection of the outbuilding at the rear, shown **hatched** on the plan below and on the submitted "Proposed Plans and Elevations drawing no. 201" described as 'Outbuilding'.

Second Schedule

3 Ewan Way, Leigh-on-Sea, Essex SS9 3RA

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated 12 February 2021

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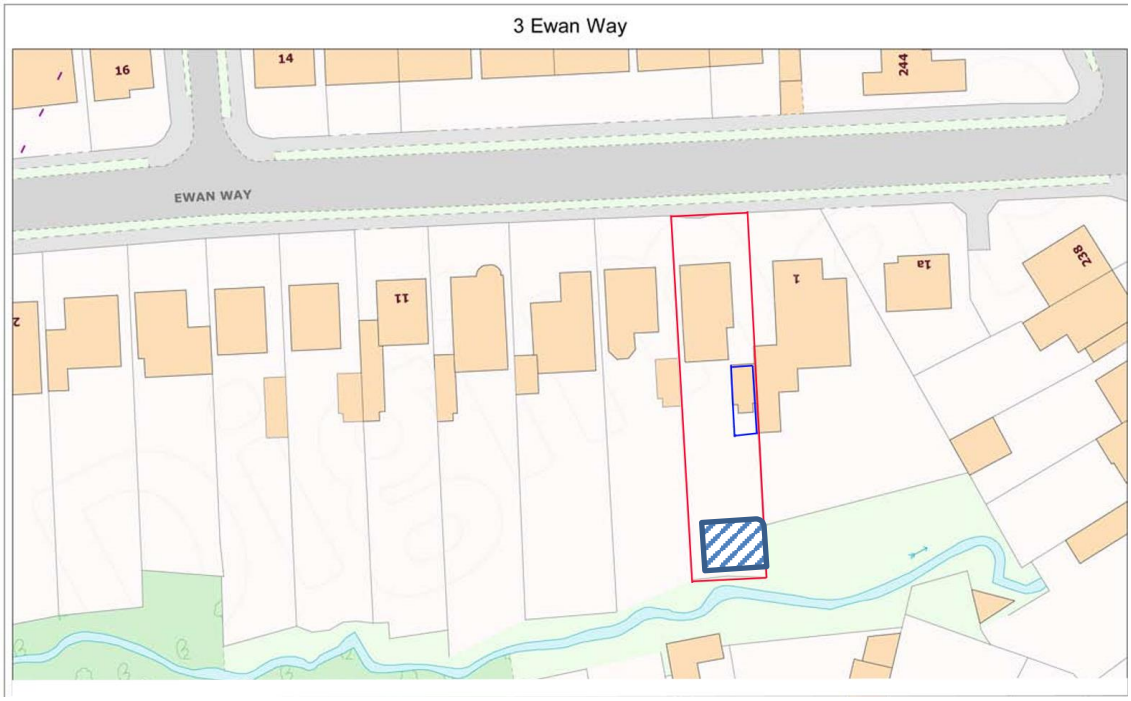

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