



Appeal Decision

Site visit made on 25 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2021

Appeal Ref: APP/X1545/X/20/3263452

30 Walden House Road, Great Totham, Essex CM9 8PN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs G Shaw against the decision of Maldon District Council.
 - The application ref LDP/MAL/20/00347, dated 25 March 2020, was refused by notice dated 20 May 2020.
 - The application was made under section 192(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 garage conversion to a residential annexe.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made by both the Maldon District Council and Mr & Mrs G Shaw. These applications are the subject of separate Decisions.

Preliminary Matters

3. I carried out an unaccompanied site visit and was able to see the building from the public highway. I have been provided with detailed plans which show the layout of the appeal building. Given the above, I am satisfied that it was unnecessary for me to access the building.

Main Issue

4. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the building operations are development requiring planning permission.

Reasons

5. 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.
6. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment

of an application for a LDC under S192 of the Act. The proposed development must be considered in the light of the facts and the law.

7. The appeal site comprises a detached dwelling with a detached garage to the rear of the plot. Although the building is set back from the road, I was able to see its front from Walden House Road, with the garage doors and dormer window above clearly visible. Views of the building from Walden Close are limited by close boarded fencing, with the dormer window and side window most prominent.
8. I have been provided plans showing the existing layout of the garage, with parking and a kitchen and shower room on the ground floor and a bedsit on the first floor. Although the building is currently used as a garage and storeroom by the appellant, it has previously been used as living space. It is proposed to convert the garage to form a self-contained annexe which would comprise an open plan living/dining/kitchen area, a wet room and bedroom with ensuite on the first floor.

Whether operational development

9. Section 55 of the Act sets out the meaning of 'development' as the 'carrying out of building, engineering, mining or other operations in, on, or under land.....'. At section 55 (1A) it is indicated that 'building operations', amongst other things, involve '(d) Other operations normally undertaken by a person carrying on business as a builder'.
10. The appellant proposes a number of physical alterations to the outbuilding, including the removal of the two existing garage doors and the replacement of these with brickwork and fenestration. Internal works would also be carried out. In this case, it is reasonable to assume that a builder would be likely to carry out the works, given the nature and extent of the alterations proposed.
11. Section 55 (2)(a)(ii), sets out that the carrying out for the maintenance, improvement or other alteration of any building works which 'affect only the interior of the building, or do not materially affect the external appearance of the building' shall not be taken for the purposes of the Act to involve development of the land. Whether or not alterations to the exterior of a building fall within development will involve consideration of the change to the external appearance of the building as a whole and not a part in isolation. The degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations/works.
12. Although the building is located to the rear of the main dwelling, it is visible from Walden House Road. The garage doors give a clear indication of the function of the building and its relationship with the main house. The replacement of the garage doors with windows and brickwork would make it appear functionally different and, despite the building's set back from the road, would be clearly visible from the public domain. As a consequence, it would, in my view, materially affect the external appearance of the building and is therefore development for the purposes of the Act.
13. Whilst I have had regard to APP/C2741/X/14/3000132, in that case, the alterations, though clearly visible from within the appellant's own land, were entirely or partly screened from public vantage points and were held to conform to the domestic character of the building. I do not, therefore, consider

the circumstances of the case to be comparable to the appeal scheme before me.

Whether permitted development

14. The appellant asserts that, even if the external alterations would constitute development, the external alterations as proposed, the removal of the garage doors and the insertion of windows accord with the criteria set out within Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO)(as amended). Class E permits the provision within the curtilage of the dwellinghouse of 'any building or enclosure...required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'.
15. Development is not permitted by Class E if: (d) the building would have more than a single storey; and (e) the height of the building...would exceed(i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building...within 2 metres of the boundary of the curtilage of the dwellinghouse. The building has more than one storey, is within 2 metres of the boundary and exceeds 4 metres in height. Consequently, it does not meet the above conditions set out in Class E.
16. The Technical Guidance for Householders, although only guidance, gives an explanation of the rules on permitted development for householders. The document confirms that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
17. Even if I were to find the building met the limitations set out in Class E, the proposed use of the building is intended to be used as living accommodation for a member of the appellants' family. As held in *Peche D'or Investments v SSE* [1996] and commented on in APP/W4705/X/14/2216602, given the word 'provision' in the GPDO, it is the primary intention of construction that should be considered. Since the building would be used to provide primary living accommodation, it would not be incidental to the enjoyment of the dwellinghouse and the works would not be development which is permitted by Class E. Furthermore, whilst the building is currently used for storage, it is not disputed that the building already comprises a bedroom, bathroom and kitchen.
18. The appellants cite the Uttlesford¹ case, which involved the 'conversion' from a garage to living accommodation. Planning permission was granted in 1988 for the erection of a house with a detached garage. The garage was built to a height greater than that which was permitted, and in April 1989, planning permission was granted for the retention of the building, subject to the condition that the garage should be used for domestic purposes only incidental to the enjoyment of the dwelling and not for any separate industrial commercial business use or as a residential annexe or separate dwelling.
19. In March 1989, planning permission was sought for the change of use for detached garage to private living accommodation to be used in conjunction with existing dwelling, which was refused, subsequently appealed and

¹ *Uttlesford DC v SSE and RJ White* [1991].

challenged in the High Court. Whilst the Court considered how the Inspector dealt with the condition attached to the 1989 permission, it did not need to consider whether the increase in height would have been lawful, since the Inspector, on the appeal against the refusal of planning permission, treated the application as if it were made under section 63 of the 1990 Act for the retention of the building at its increased height without compliance with the condition attached to the April 1989 consent. The Uttlesford case does not, therefore, support the appellants' contention that the proposed works would not require planning permission.

20. The appellants have drawn my attention to an article regarding an authority's refusal of permission for the conversion of an outbuilding to a granny annexe and a series of extracts of appeal case, referenced with a DCS No². Whilst I have considered the information submitted, I do not have full details of the cases cited and cannot be sure they are comparable to scheme before me.
21. Much of the appellants' case is predicated on the basis that there would be no material change of use and the appellants have drawn my attention to a number of appeal decisions³, which considered whether or not accommodation which provides living accommodation would result in a material change of use. I accept that, as confirmed in *Uttlesford DC v SSE & White* [1992] JPL 171 even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling.
22. Nevertheless, as set out above, the proposed works are development for which planning permission is required. Since the works would be an integral part of the conversion, the proposed garage conversion to a residential annexe is development for which planning permission is required.

Other Matters

23. When considering whether the use of the building would be incidental to the enjoyment of the dwellinghouse, within its officer report, the Council cites the case of *Emin v SSE & Mid Sussex DC* (1989) JPL 909. Emin, however, deals with whether a proposed outbuilding would be incidental on the basis of reasonableness and subordination and so I do not find it particularly instructive in this case.

Conclusion

24. 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 garage conversion to a residential annexe 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.

M Savage

INSPECTOR

² Letter dated 17 March 2021: PLG 3

³ APP/C2741/X/14/3000132, APP/J2373/D/16/3156984, APP/P1045/X/18/3202007 and APP/V3120/C/16/3147099