



Appeal Decision

No Site Visit

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Appeal Ref: APP/L5240/X/21/3273459

54 Thornton Avenue, Croydon CR0 3BU

- 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 Jason Davis against the decision of the Council of the London Borough of Croydon.
 - The application ref 20/02941/LP, dated 7 August 2020, was refused by notice dated 22 October 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 dropped kerb and off street parking.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have received no objection to this approach and am satisfied that the appeal can be determined on the evidence before me.

Main issue

3. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class F of Part 1 and Class B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

4. 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. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
5. 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. Class F of Part 1 of Schedule 2 of the GPDO permits the provision with the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the

enjoyment of the dwellinghouse as such and Class B of Part 2 of the same Schedule 2 permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

7. The appeal scheme proposes permeable block pavements and drainage, to provide off-street parking to the front of the dwelling and a dropped kerb. The proposed drawing shows the front garden with a depth of around 4.3m, and a vehicle to be parked perpendicular to the road to the front of a window. The GPDO does not set minimum requirements for a parking area. Nevertheless, Class B requires that the access is '*required in connection with development permitted by any Class in this Schedule*'.
8. While the GPDO permits the construction of a means of access to a highway, permission would also be required from the Highway Authority for the construction of the crossover. The Council has provided guidance in this regard, which states that on non-classified roads, the front garden must be able to accommodate a car parked at 90 degrees to the footway and the car-standing area must be a minimum size of 2.4m wide and 4.8m long. The guidance provided by the Council sets out the size of the parking space will allow most vehicles to be parked without overhanging the footway.
9. The appellant has provided me with a number of examples of parking to front gardens along Thornton Avenue and asserts that they would have been carried out under permitted rights. However, I do not have full details of the examples cited and cannot therefore be sure of the circumstances under which they were constructed. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.
10. Although the proposed plan shows a vehicle parked to the front of the dwelling, given the limited depth of the garden it is unlikely that the Highway Authority would grant approval for the construction of the crossover. Consequently, the hard surface is very unlikely to be used for the parking of a vehicle. No other purpose has been identified for the hard surface. It has therefore not been demonstrated that the hard surface would be used for a purpose incidental to the enjoyment of the dwellinghouse and, since the development would not result in a parking space, no vehicular access is required.
11. Thus, for the reasons given above, the hardstanding and dropped kerb is not permitted by Class F of Part 1 and Class B of Part 2 of Schedule 2 of the GPDO.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed dropped kerb and off street parking 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