



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/W5780/X/21/3280145

2 Rochester Gardens, Cranbrook, Ilford, IG1 3LZ

- 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 Imran Ali Whaid against the decision of the London Borough of Redbridge.
 - The application ref 2653/21, dated 17 June 2021, was refused by notice dated 9 July 2021.
 - 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 'single storey outbuildings in the rear garden'.
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Decision

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

Preliminary Matters

2. I have used the description of the proposed development as it appears on the application form submitted to the Council. That is what was applied for. The Council though changed the description to 'Extension to the existing outbuilding'. However, for important reasons that I shall set out below, that is not correct. I shall consider the appeal proposal as single storey outbuildings.
3. The outcome of the appeal requires only legal grounds to be assessed. There are no matters of planning merit to consider. Furthermore, the submitted evidence from both sides is clear about what is in dispute between the parties. As such, I have not found it necessary to visit the appeal site.

Main Issue

4. The main issue is whether the proposed outbuildings would have planning permission by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

Reasons

5. A previous Inspector considered whether two proposed single storey outbuildings to be physically attached to an existing building in the rear garden would be development permitted by the GPDO. They found (Appeal Decision Ref: APP/W5780/D/21/3264521) that although each new wing attached to the existing building would not exceed 2.5 metres in height, because the existing structure was already higher than this, the building as a single built form would exceed the height restriction under limitation E(1)(e). As such, the resultant building would not have constituted permitted development.

6. In this appeal, the appellant has resubmitted plans showing very narrow 50mm gaps between the proposed new outbuildings and the existing garden building. On this basis, each new building would be freestanding and each below the 2.5m height limitation. The Council states that the submitted plans are not clear on the separation point which appears to have led it to amend the application description. However, on the proposed floor plan, gaps are shown between the existing building and the two new buildings to be erected at right angles to the existing structure. Measurements are also specified of '50' for each gap. Looking at the other numerical notes the '50' could only reasonably mean 50mm. The proposed roof and elevation plans also show narrow breaks between the existing and proposed outbuildings. The proposed elevation on drawing No. D05 and the cross-section drawing do not show such breaks. However, given the orientation of the elevation and section depicted this would not be appropriate anyway. In my view, the submitted plans are clear that the two new outbuildings would be freestanding.
7. The Council only refers to criteria E(1)(e) of Class E being exceeded. In view of the above, neither building would exceed the 2.5m height limitation. Accordingly, the development proposed would have planning permission granted by the GPDO. Consequently, the development would be lawful.

Conclusion

8. 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 single storey outbuildings in the rear garden 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.

Gareth Symons

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 17 June 2021 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The two outbuildings would be development that has planning permission by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Gareth Symons

Inspector

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First Schedule

Single storey outbuildings in the rear garden

Second Schedule

Land at 2 Rochester Gardens, Cranbrook, Ilford, IG1 3LZ

IMPORTANT NOTES – SEE OVER

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: 21 January 2022

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Scale: Not to Scale

