
Appeal Decision

Site visit made on 17 February 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/N5090/X/21/3283258
42A Oakleigh Park South, London N20 9JN

- 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 in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Varsha Visavadia of ILLY Computer Systems Ltd against the decision of the Council of the London Borough of Barnet.
- The application Ref 21/4102/192, dated 22 July 2021, was refused by notice dated 20 August 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 described as 'Remove existing Garage doors, and insert tunnel windows' and 'Enclose existing Entry Porch'.

Summary Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Council's decision notice of 20 August 2021 purports to be a certificate of lawful use or development, albeit one that certifies the proposed development to be 'unlawful'. I therefore treat the appeal as being against a refusal in part.
2. At the time of my (unaccompanied) site visit the front of the house was surrounded by scaffolding and a works van was parked in the driveway obscuring my view of the entrance to the house. I am satisfied from the documents including photographs before me that I nevertheless have sufficient information on which to base my decision, the parties having agreed that it is not essential for me to enter the site to check measurements or other relevant facts. I had a full view of the front of the garage.
3. My role in determining the appeal is not concerned with the planning merits of what is proposed, or with what the Council may have said in correspondence or have determined in relation to other sites. The question is whether the appellant has demonstrated, on the balance of probability, that the development proposed would be lawful.
4. Two separate proposals are before me: alterations to the garage, involving replacing the existing doors with brickwork and windows; and, separately, the proposed enclosure of what is shown to be an open 'porch' area. It

appears to me that these are 'severable' developments each requiring separate consideration. If I find one to be lawful at the relevant date but not the other, it follows that I consider that the appeal could potentially succeed in part.

5. I wrote to the parties seeking their views in relation to the 'porch' element of the proposal, specifically in relation to the particular permitted development rights that may be relevant to it. I consider their responses (where received) in my reasoning below.

Main Issues

6. It is agreed by the parties that each element of the proposal constitutes development requiring planning permission. The dispute between them arises in relation to whether a permission has been conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (in the iteration that existed at the time of the application) (hereafter 'the Order'). Specifically, the permitted development rights conferred by Class D of Schedule 2, Part 1 to the Order are claimed in respect of the 'porch', and it appears that Class A rights are claimed in respect of the proposed works to the existing garage.
7. Class D provides for the erection or construction of a porch outside any external door of a dwellinghouse, subject to a number of provisos including a limit on the ground area of the structure. Class A provides for the enlargement, improvement or other alteration of a dwellinghouse. All permitted development rights are conferred by article 3 of the Order, which itself provides for a number of specified exceptions. One of those (article 3(4)) is to say that nothing in the Order permits development contrary to any condition imposed by any planning permission granted under Part 3 of the 1990 Act.

Reasons

The porch

8. I queried with the parties whether, having been described as a proposal to 'enclose' the porch, the development is aptly described by the Class D permission. The situation here is that, between the house and the garage that lies forward of it, there is a covered 'inset' area. This is walled to three sides: to the NE is the front door to the dwellinghouse; to the NW is a window to the dwelling, and to the SW is a door into the garage. The proposed development is to enclose this covered 'inset' (on its presently open SE side) by the provision of patio doors with glass infill panels. These doors and panels would 'fill in' the side wall of the garage to the rear so as to meet the front elevation of the existing dwellinghouse at a right angle.
9. Development is not permitted by Class D if it would result in the ground area (measured externally) of the structure exceeding 3 square metres. The Council considers the ground area of what would become enclosed by the patio doors and panels to exceed 4 square metres. I agree from considering the plans supplied that the enclosed area would exceed 3 square metres.
10. Therefore, if what is proposed amounts to the erection or construction of a porch, it would not be permitted by Class D because the structure would

exceed 3 square metres' ground area. However, if it does not amount to the erection or construction of a porch, then it is not permitted by Class D at all.

11. I have considered whether what is proposed amounts to the construction (by enclosure) of a porch, but a construction that does not create any ground area. It is the case that the 'inset' is presently roofed (described as 'part-covered' on the Existing Plan, drawing ref SCSD0146.237), and walled to 3 sides but although potentially contributing to the overall building footprint it does not presently consist of any habitable floorspace and is open to the elements. On balance I do not think that what is proposed can reasonably be described as the 'erection or construction' of a porch (and it is anyway not described as such by either party). It therefore does not fall to be considered under Class D. If I am wrong about that, then I consider the corollary of 'constructing' the porch would be to have to consider the ground area created by its construction (by means of enclosure). Because that ground area would exceed 3 square metres, it would not be permitted by Class D.
12. If the proposed porch is not permitted by Class D, this does not preclude consideration of whether it is permitted by any other Class. I therefore consider whether or not it would be so permitted, although neither party responded to my express question on the point. The appellant draws my attention to a number of other lawful development certificate applications in the Barnet Borough. In particular, reference is made to a certificate granted in respect of the neighbouring property, said to be identical, confirming that to enclose the porch would be lawful under Class A.
13. Class A confers permission for the enlargement, improvement or other alteration of a dwellinghouse. Development is then not permitted if any of a number of exceptions apply. One of those (paragraph (e)) is where the enlarged part of a dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse.
14. As the building faces the road, the garage sits forward of the habitable dwellinghouse and so I have considered whether the front of the garage, which is attached to the house, constitutes part of the 'principal elevation' of the dwellinghouse. If so, then the proposal is potentially permitted, because the side-on patio doors and panels would fall behind the main elevation of the dwellinghouse at that point. As the garage is attached to the front of the house, it may be that it necessarily forms part of the principal elevation, but to avoid doubt I have considered whether it forms part of the dwellinghouse.
15. The Council have referred me to historic permissions granted, culminating in one granted in April 1975 for 'three detached houses and double garages'. A permission granted a little earlier was for detached houses with 'integral' garages.
16. Although I have not seen detailed plans of the iterations of the proposed developments for which permissions were granted in the 1970s, the earlier description of the garage as 'integral' appears to me apposite. It is the case that it is necessary to exit the front door of the house before crossing the 'porch area' to access the garage. This porch area is, although open-sided to the SE, covered, and the garage building and the dwelling have the appearance of constituting a single building, with integrated roofs. Therefore I conclude that the garage is a constituent part of the dwellinghouse, rather than constituting a separate (albeit attached) building.

17. Accordingly, I consider the front wall of the garage to constitute the dwelling's principal elevation across its own width. As the proposed patio doors and panels would lie behind that elevation, constituting an infill, I do not consider that it offends the Class A paragraph (e) requirement because it is not forward of the principal elevation at that point. No other paragraph in the Class appears to have any potential application.
18. Therefore I conclude that the proposal would be permitted by Class A, and that the Council's refusal was not well-founded in this regard.

The garage

19. A planning permission has previously been granted to allow the conversion of the garage and to replace the garage doors with windows; however, this was many years ago and there is no suggestion that the permission remains extant. I am not informed what permitted development rights were generally available at the relevant time. Advice has recently been received by the appellant from the Council to the effect that permission is not required; however, on receipt of the formal application (now the subject of this appeal) the Council determined that the proposal would not be lawful (or would in their words be 'unlawful'). The Council relies on the operation of article 3(4) of the Order and the existence of a condition imposed on a previous planning permission.
20. The Council refers me to a series of five planning permissions and has reproduced some details. Permissions were granted respectively for two and three houses on a plot of land including the appeal site in the mid-1970s. Neither party has identified which particular development was begun, although from my observations it appears that it will have been under one of the permissions for three houses. The final such permission was granted on 14 April 1975 for 'three detached houses with double garages'.
21. Each permission reproduced included a planning condition requiring that the garages be used as garages only, and excluding their use to house vehicles other than private vehicles. They are identically worded in each permission. The reason given in each case appears directed towards the latter part of the condition: to ensure that the development does not prejudice the amenities of the locality by the introduction of commercial uses or vehicles which could be a source of nuisance or annoyance. The reasoning is silent about why the garages shall be used as garages only rather than for any other purpose associated with each dwellinghouse.
22. Whilst the present proposal in respect of the garage does not expressly include any matters relating to its use, the proposal includes bricking up the existing garage doors and adding 'tunnel' windows to the front elevation. Such works would clearly preclude the use as a garage which the relevant planning conditions each require (on the assumption that 'use as a garage' contemplates the housing of vehicles). It has not been suggested to me that the conditions are unreasonable or void for any reason. Whilst a positive use as a garage could perhaps not be insisted upon, the implication in each case is that the garages cannot be used for any other purpose.
23. The conditions do not expressly exclude the application of any permitted development rights, and I am not told by either party what such rights will have been available when the relevant permission was granted. Because the

proposed works would defeat the requirement to maintain the garage for use as a garage, they would be contrary to a condition imposed by a previous planning permission, thus potentially falling within the ambit of article 3(4) of the Order.

24. That is not the end of the matter because, although the relevant conditions each prescribe (or proscribe) the use of the garage, it is necessary to consider whether the proposed works are otherwise permitted development under the Order. If so, it is then necessary to consider whether the applicable condition has the effect for which the Council contends.
25. It follows from my reasons in relation to the porch that I am satisfied that the attached garage building forms part of the dwellinghouse. That being the case, Class A rights would arise because the proposed works constitute an enlargement, improvement or other alteration to a dwellinghouse.
26. No exceptions, conditions or limitations in Class A itself are contended for by the Council, who rely only on the operation of the relevant planning condition and article 3(4).
27. A series of cases in the Courts have considered whether and when a planning condition will operate to remove permitted development rights. One such case was *Dunnett Investments Limited v (1) SSCLG and (2) East Dorset DC* [2017] EWCA Civ 192, on appeal from [2016] EWHC 534 (Admin). In the High Court proceedings, Mrs Justice Patterson set out (at paragraph 37) a number of the principles to be applied in construing planning conditions:
- (i) Planning conditions need to be construed in the context of the planning permission as a whole;
 - (ii) Planning conditions should be construed in a common sense way so that the court should give a condition a sensible meaning if at all possible;
 - (iii) Consistent with that approach a condition should not be construed narrowly or strictly;
 - (iv) There is no reason to exclude an implied condition but, in considering the principle of implication, it has to be remembered that a planning permission (and its conditions) is "a public document which may be relied upon by parties unrelated to those originally involved";
 - (v) The fact that breach of a planning condition may be used to support criminal proceedings means that "a relatively cautious approach" should be taken;
 - (vi) A planning condition is to be construed objectively and not by what parties may or may not have intended at the time but by what a reasonable reader construing the condition in the context of the planning permission as a whole would understand;
 - (vii) A condition should be clearly and expressly imposed;

- (viii) A planning condition is to be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood;
- (ix) The process of interpreting a planning condition, as for a planning permission, does not differ materially from that appropriate to other legal documents.

28. The relevant permission in those proceedings was to restrict the use of the building permitted to “purposes falling within Class B1 (business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained”. The reason given was in order for the Council to be satisfied about the details of [the] proposal due to the particular character and location of it.
29. One of the questions in the proceedings was whether the condition effectively excluded the operation of permitted development rights. Both the lower and upper courts found that it did. The lower court relied expressly on the inclusion of the words ‘for no other purpose whatsoever without express planning consent’, finding (I paraphrase) that excluding permitted development rights, although not expressly stated, must have been what the condition was designed to do because those words otherwise served no other purpose. On appeal their Lordships found Patterson J to have been correct on this issue for the reasons she gave.
30. The condition at issue in *Dunnett* may be distinguished from the present condition in a number of ways. The present condition does not refer to a use class, or to the Use Classes Order (or to any permitted development order). Construing the condition together with the reasons for it, it is aimed at ensuring that the garage remains in use as a constituent element of the residential dwellinghouse use that was then being permitted for the building to be constructed, seeking expressly to prevent any use of the garage for commercial purposes.
31. Insofar as reasons were given for the imposition of the condition, they related only to restraining any commercial uses. No reasons were given relating to the desirability of maintaining the appearance of the garage, or why it might be important for the garage to be made available for housing domestic vehicles. There is no reference in the condition to prohibiting ‘any other purpose whatsoever’ or requiring any express planning consent to allow any physical alterations or different use, the phrasing found in *Dunnett* to be clearly exclusive of permitted development rights.
32. There is nothing else in the conditions attached to any of the relevant permissions that appears to seek to exclude any permitted development rights of any kind albeit, as I have acknowledged, I am not informed as to what permitted development rights may have existed when the relevant permissions were granted.
33. Given all these factors, I am not persuaded that the condition has the effect of restricting the permitted development rights that arise under Class A for the development that it is now sought to carry out. The wording of the condition is not sufficiently unequivocal or explicit for me to conclude that it operates to exclude those rights. Its supporting reasons do not say why it

should. Whether in turn it restricts the ability of the occupants to use the garage for other purposes that may (or may not) be primarily or incidentally related to the use of the dwellinghouse is not a question before me.

34. Therefore I do not consider the Council's refusal in this regard to have been well-founded, and shall allow the appeal in respect of this element too.

Conclusion

35. For the reasons given above I conclude that the Council's refusal in part to grant a certificate of lawful use or development in respect of (1) removing existing garage doors, and inserting tunnel windows; and (2) enclosing existing entry porch was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

36. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Laura Renaudon

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 22 July 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Permission was conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon

Inspector

Date: 11 March 2022

Reference: APP/N5090/X/21/3283258

First Schedule

- (1) Remove existing garage doors and insert tunnel windows
- (2) Enclose existing entry porch

In accordance with the following plans and drawings:

Location Plan SCSD0146.237 sheet A-00

Existing SCSD0146.237 sheet A-01

Proposed SCSD0146.237 sheet A-02

Second Schedule

Land at 42A Oakleigh Park South, London N20 9JN

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 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, 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 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.