



Appeal Decision

Site visit made on 1 March 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/Z1510/X/21/3286545

28 Claudius Way, Witham CM8 1PY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Mrs Cathryn McGrath against the decision of Braintree District Council.
 - The application Ref 21/02646/PLD, dated 22 August 2021, was refused by notice dated 12 October 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 to convert the existing garage into a workshop/room with a separate toilet/shower area.
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Decision

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

Main Issue

2. The planning merits of the proposed development are not relevant in an appeal against a refusal of an LDC application.
3. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded. In this case, particular regard is to be had as to whether the proposed development would be granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

4. The proposed development would constitute the conversion of a ground floor garage into a workshop with a separate toilet and shower room. The building operations would include the removal of the existing garage door. The resultant gap would be bricked up. In addition, a garage door would be inserted into the existing gap which forms the car port. Finally, an external door and a window would be inserted into the rear elevation of the converted garage.
5. There is no dispute that the proposed works constitute development for the purposes of Section 55 of the Act. I see no reason to disagree. Article 3(1) of the GPDO grants planning permission for those classes of development defined

- as 'permitted development' under Schedule 2. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse. Class A of that part states that the enlargement, improvement or other alteration of a dwellinghouse is permitted development.
6. There is no definition of a dwellinghouse within the Act. Nevertheless, Article 2(1) of the GPDO states a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building. Article 2(1) defines a flat as, "a separate and self-contained set of premises constructed or adapted for use for the purposes of a dwelling and forming part of a building from some other part of it which is divided horizontally."
 7. The Council argues that the appeal property constitutes a flat and thus is not a dwellinghouse for the purposes of the GPDO. It therefore says that the proposed development cannot be permitted development under Class A.
 8. The appeal property is a 1 bedroom, two storey building. It forms part of a terrace of two-storey development which has a mixture of dwelling types from 1 bed flats to 3 bedroom dwellinghouses. It has a garden to the rear.
 9. The submitted floor plans indicated that at ground floor the building comprises a single entrance door to the front which leads into a hallway and staircase to the first floor. The only other accommodation at ground floor level is an understairs cupboard, accessed externally, a car port, from which there is a side door into the hallway, and the garage which is solely accessibly via the garage door. No first floor plans are provided but it is indicated that the first floor comprises living accommodation.
 10. Overall, the building is shown to be set out as a single dwelling with rooms over two floors and one entrance door, indicative of a single household use. Indeed, the appellant points out that the entirety of the property, ground and first floor, is in single freehold ownership. This is evidenced in part by the HM Land Registry plan.
 11. Whilst the living accommodation is divided horizontally from the garage and car port, it is not divided horizontally into separate dwellings, as the definition of a 'flat' indicates, or indeed other separate units. The fact that the ground floor is not living accommodation does not mean that it must be defined as a flat. As a result, I am satisfied that the appeal property constitutes a dwellinghouse having regard to the definition in Article 2(1) of the GPDO since it does not comprise a building containing one or more flats, nor is it a flat contained within such a building.
 12. The Council also points towards a dictionary definition of a maisonette which states that a "maisonette is a flat that usually has a separate door from outside from other flats in the same building, many maisonettes are on two floors." However, I have concluded that the appeal property does not constitute a flat. It follows therefore, that it would not meet the dictionary definition of a maisonette as referred to by the Council.
 13. I agree with the parties that the proposed development would not fall within the limitations set out under Paragraph A.1 of Class A. As a result, provided the development meets the conditions set out in Paragraph A.3 of Class A, the proposed development would be 'permitted development' under Class A of Part 1 of Schedule 2 of the GPDO.

14. Section 191(2) of the Act states that operations are lawful at any time if a) no enforcement action may be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
15. Since the proposed development would have been granted planning permission by Article 3(1) of the GPDO at the date the LDC application was made, enforcement action may not have been taken in respect of it at that date. In addition, there is no evidence before me that the proposed development would constitute a contravention of any requirements of any enforcement notice in force at that date.
16. I conclude, therefore, that at the date the LDC application was made, the proposed development would have been lawful.

Conclusions

17. 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 the conversion of the existing garage into a workshop/room with a separate toilet/shower area 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.

J Whitfield

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 August 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 proposed development would have been granted planning permission by Article 3(1) of the GPDO and thus enforcement action may not have been taken in respect of it. In addition, the proposed development would not constitute a contravention of any requirements of any enforcement notice in force at that date.

Signed

J Whitfield

Inspector

Date 14 March 2022

Reference: **APP/Z1510/X/21/3286545**

First Schedule

Convert the existing garage into a workshop/room with a separate toilet/shower area.

Second Schedule

Land at **28 Claudius Way, Witham CM8 1PY**

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:

by J Whitfield BA(Hons) DipTP MRTPI

Land at: 28 Claudius Way, Witham CM8 1PY

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Scale: NTS

