



Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2022

Appeal Ref: APP/H1515/X/21/3282033

34 Kensington Way, Brentwood, Essex, CM14 4RL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a failure to determine an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Rodney Kirsopp against Brentwood Borough Council.
- The application Ref: 21/01143/S192 was dated 23 June 2021.
- The application was made under section 192(1)(a) and (b) of the Act.
- The development for which a LDC is sought is described as "Convert the existing ground floor garage into a kitchen, re-purpose kitchen into a study".

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The appeal was lodged on 1 September 2021, this date being after the expiry of the statutory time limit for determining the application. However, the Council have set out their reasons as to why the appeal should be dismissed in their written appeal submissions.
2. For a LDC to be granted under s192 of the Act an appellant needs to show, on the balance of probabilities, that the proposed development would be lawful. Matters such as planning policies and the effect of the development on the character and appearance of the area are not relevant. My determination is made solely on relevant matters of fact, planning law, and application of judicial authority. In this case the proposal includes operational development within s192(1)(a), being the construction of a front wall and window to enclose the existing integral garage, and the proposed use of the completed room as a kitchen, s192(1)(b).
3. The appellant's case is that the operational development would comprise an alteration to a dwellinghouse, benefitting from the planning permission granted by Article 3(1) and Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (hereafter "the Order"), referred to as "permitted development". Also, that the use as a kitchen would be permitted by the terms of the Town and Country Planning (Use Classes) Order 1987.
4. I agree that use of the garage for other residential purposes would not involve a material change of use and so would not be "development" as defined by s55 of the Act. However, even if uses are not "development" they may still be restricted by planning conditions attached to a planning permission.

5. Turning to the operational development, the infilling of the garage with a new wall and window would be building operations, thereby falling within the definition of "development" within s55 of the Act. Such an alteration would be classed as an improvement or alteration to a dwellinghouse and would, unless otherwise restricted, be permitted development within Class A of the Order.
6. Article 3(4) of the Order disapplies the planning permission granted by Article 3(1) of the Order where any development would be contrary to any condition imposed by any planning permission. In this regard, the Council's undisputed evidence is that the property is subject to condition 20 (C20) of planning permission 10/00201/FUL, which states:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting this Order) the garages hereby permitted shall be used **solely for the accommodation of private motor vehicles and for purposes incidental to the dwellings, and shall not be converted to living accommodation** without the prior approval in writing of the Local Planning Authority". (My emphasis in bold).
7. C20 therefore restricts use of the garage to parking of motor vehicles and incidental uses, and expressly prohibits conversion to living accommodation. The proposed operations and use would therefore be in breach of C20. As such, the proposed operational development and use as a kitchen would not be permitted development by virtue of Article 3(4) of the Order. Consequently, in the absence of a grant of express planning permission from the Council the proposed development would not be lawful.

Formal Decision

8. For the reasons given above I conclude on the evidence now available that the Council's deemed refusal to grant a LDC in respect of converting the existing ground floor garage into a kitchen at 34 Kensington Way, Brentwood, Essex, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the Act.

Thomas Shields

INSPECTOR