

Appeal Decision

Unaccompanied site visit made on 4 March 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref : APP/P3610/X/21/3278417

Land at 31 Victoria Place, Epsom, Surrey, KT17 1BX

- 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 to grant a certificate of lawful use or development (LDC).
- The appeal is made by Amber Kirk against the decision of Epsom and Ewell Borough Council.
- The application reference 20/01120/CLP dated 3 August 2020 was refused by notice dated 21 September 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 a vehicle cross over (dropped kerb).

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The main issue turns on whether the proposed development would have been lawful at the time of the application.
4. The appeal site is a semi-detached dwellinghouse in a residential area. It sits within the Linton Lane Conservation Area. The application concerns the proposed formation of a vehicular access crossover (involving a dropped kerb) at the front of the property. The application the subject of this appeal explains that the purpose of the cross over is to provide off street parking for the property.
5. Planning permission is granted by virtue of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) for

certain classes of permitted development subject to certain conditions and limitations. These permitted development rights can be restricted by an Article 4 Direction pursuant to the GPDO.

6. Schedule 2 Part 2 Class B of the GPDO grants permitted development rights for '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)'. There is no dispute that the proposed crossover falls within Class B and I agree. But an Article 4 Direction covers the appeal site and removes permitted development rights for the provision of hardstanding (ie a parking area) within the curtilage of a house. The proposal does not therefore benefit from Class B permitted development rights and requires planning permission.
7. The Appellant draws to my attention that the proposed cross over is intended to align to the many neighbouring properties with dropped kerbs and to provide safe parking for the property creating cohesion and synergy with neighbours. I also have before me comments from a third party. But as I have explained the planning merits of the proposal are not relevant in this appeal which concerns only whether the proposed development would have been lawful at the time of the application. It is not within my remit in this appeal to consider an application for planning permission for the proposed development.
8. I conclude for the reasons given above, on the evidence now available, that the proposed works comprising a vehicle cross over would comprise development requiring planning permission. The works would not have been lawful at the time of the application. I consider that the Council's decision to refuse to grant the LDC was well founded and the appeal should not succeed. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal Decision

9. The appeal is dismissed.

S. Prail

Inspector