



Appeal Decision

Site visit made on 12 April 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/V2255/X/21/3277311

11 Challenger Close, Sittingbourne, Kent ME10 2HZ

- 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 Mr Ian Ludlow against the decision of Swale Borough Council.
 - The application Ref 21/502090/LAWPRO, dated 16 April 2021, was refused by notice dated 17 June 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 '*Convert garage into a habitable room*'.
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Decision

1. The appeal is dismissed.

Background

2. The Council has indicated that the conversion of domestic garages to habitable floorspace within the wider housing development of which the appeal dwelling forms part is prohibited by planning permission ref SW/79/0743, granted in 1979. Condition 3 thereto requires that areas shown as car parking space shall be retained thereafter.
3. Notwithstanding the terms and conditions of the above planning permission the Council subsequently granted planning permission in August 2014 under ref 14/500415/FULL for the said garage's conversion into a study and downstairs w/c. However, it appears that this permission was not implemented within the required three year period.
4. This is confirmed by the form submitted with the LDC application dated 16 April 2021 which specifically states that the approved development had not yet been started. In effect the said planning permission had expired unimplemented on 18 August 2017.
5. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 16 April 2021. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
6. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and is on the balance of probabilities.

Main Issue

7. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

8. An insert on the LDC application form, asking why the garage conversion is lawful, indicates that it is permitted development. However, this is incorrect given the relevant condition attached to the 1979 application which remains in effect and was imposed to retain all associated parking space.
9. I acknowledge the appellant's representations that notwithstanding the garage's conversion there still remains two car parking spaces on the dwelling's front driveway. As mentioned, though, the planning merits and/or impacts of the development are not relevant to this particular type of application and I am not able to take such matters into account. These would only become considerations in the event of an application for planning permission being submitted.
10. For the above reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the garage conversion at 11 Challenger Close, Sittingbourne, Kent ME10 2HZ was well founded and the appeal must fail. Accordingly, I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Timothy C King

INSPECTOR