



Appeal Decision

Site visit made on 19 July 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Appeal Ref: APP/L2250/X/21/3277986

1 Walnut Tree Cottage, Ashford Road, Brenzett TN29 0BD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Smart & Miss M Cooney against the decision of Folkestone and Hythe District Council.
 - The application ref 21/0411/FH, dated 24 February 2021, was refused by notice dated 22 April 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 proposed single storey side extension.
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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 found to be lawful.

Preliminary Matters

2. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability.
3. On my site visit I saw that an extension has been constructed in the position of that proposed by this application. I was only able to see the site from the road and I have not been provided with any details of what has been constructed, or when. It may be the building proposed by this application. I note the Council did not visit the site in assessing the application. Given the application was for proposed development, I will assume that the development was not begun on the date of application. On that basis, I will consider whether the development would have been lawful if begun on the date of application, being 24 February 2021 (the relevant date). For clarity, my decision is based on the details of the extension submitted with the application.
4. The appellant suggests that the extension was proposed to be constructed in accordance with the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council suggest that the extension complies with the requirements of Class A, Part 1, Schedule 2 of the GPDO, except in relation to paragraph (e)(ii) relating to whether the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse.
5. As a result, the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. Class A, Part 1, Schedule 2 of the GPDO grants planning permission for enlargements, improvements or other alterations to dwellinghouses, subject to a number of limitations. The limitation at Paragraph (e)(ii) means that, where the enlarged part of the dwellinghouse would both extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse, it would not comprise permitted development. It is not about whether the building fronts a highway, but whether the wall forming the side elevation does so. So, if an enlargement extended from a wall forming an original side elevation but did not front the highway it would, subject to meeting all other requirements of the GPDO, be permitted development.
7. In this case, the parties agree that the extension was proposed to the side of the dwelling. The front elevation is broadly parallel to the road, the end furthest from the extension slightly closer to the road than the end to which the extension was proposed to be attached. The road is straight as it leads past the site, turning away from the property in front of the neighbouring field. Given that layout, the front elevation of the original dwelling fronts the highway, but the side elevation does not. Consequently, the proposal would extend from a wall forming an original side elevation but would not front the highway.
8. For these reasons, the extension proposed would comply with paragraph (e)(ii), Class A, Part 1, Schedule 2 of the GPDO. I see no reason to disagree with the Council's conclusions that the proposal would not conflict with other provisions of the GPDO.
9. 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 a single storey side extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

AJ Steen

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 24 February 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would benefit from the planning permission granted by Article 3 and Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

AJ Steen

Inspector

Date: 25 July 2022

Reference: APP/L2250/X/21/3277986

First Schedule

Single storey side extension

Second Schedule

Land at 1 Walnut Tree Cottage, Ashford Road, Brenzett TN29 0BD

IMPORTANT NOTES – SEE OVER

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 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 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: 25 July 2022

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Not to scale

