
Appeal Decision

Site visit made on 12 April 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 August 2022

Appeal Ref: APP/N4720/X/22/3292368

South Wood, Ling Lane, Scarcroft, Leeds LS14 3HT

- 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 Rasham Singh against the decision of Leeds City Council.
 - The application Ref 21/10065/CLP, dated 11 December 2021, was refused by notice dated 8 February 2022.
 - 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 pair of double garages with pitched roof not more than 4m to ridge and more than 2m from boundary.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is found to be lawful.

Application for costs

2. An application for costs was made by Leeds City Council against Mr Rasham Singh. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Reasons

4. The proposed development is a building containing a pair of double garages which would be located to the rear garden behind the dwelling.
5. Class E permits buildings incidental to the enjoyment of a dwellinghouse, subject to a number of limitations. The Council is satisfied that the proposal would fall within the limitations except for paragraph (e) whereby development is not permitted if the height of the building would exceed (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case.

6. The height of the new building at the highest point of its dual pitched roof would be 4 metres. Though a minimum distance of 2.1 metres from the site boundary is indicated on the proposed block plan, this distance would not include the eaves overhang of the roof. Instead, it is measured from the external face of the proposed western wall.
7. The 'Permitted development rights for householders – Technical Guidance' (September 2019 Ministry of Housing, Communities and Local Government) states that 'if any part of the building, container or enclosure is within 2 metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres if it is to be permitted development'.
8. The Council contend that, measuring from the plans, at its closest point the building would be set at 1.7 metres from the western boundary of the site. As such, the building would exceed the height criteria stipulated in paragraph (e), as it could not be PD if it exceeded 2.5m in height. In his statement of case, the appellant agrees that on the plans accompanying the application, the measurement of 2.1 metres is from the boundary to the proposed wall, and not to the edge of the roof.
9. However, in response to the Council's application for costs against him, the appellant has submitted a revised drawing ref: 2033 2200 with the proposed garage block in a new position. This new drawing shows the corner of the garage building with its nearest part set at a distance of 2.1m from the boundary. These new dimensions bring the proposed garage within the PD limits set out in Class E.

Conclusion

10. An LDC application is not an application for planning permission, and there is no mechanism within the process for a minor amendment per se. However, whilst on the one hand, s195 appeals are a review of the authority's decision, they are treated as 'de novo' appeals, whereby parties may submit additional evidence which was not before the authority at the time of its decision.
11. I may therefore consider any relevant fresh evidence advanced at appeal, including where it was not advanced at the application stage, the purpose of the LDC provisions being to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
12. In any event, it would serve no public purpose to refuse an LDC strictly on the basis of the evidence submitted with the application, because it would always be open to the applicant to make a further LDC application, in this case, on the basis of the new drawing ref: 2033 2200.
13. Therefore, although the Council's decision was well-founded on the basis of the information submitted with the original application, I am satisfied on my assessment of the subsequent documentation submitted by the appellant that the proposed garage would be permitted development within Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015. The appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elaine Gray 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 11 December 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 garage would be permitted development within Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Elaine Gray

Inspector

Date: 01 August 2022

Reference: APP/N4720/X/22/3292368

First Schedule

Pair of double garages with pitched roof not more than 4m to ridge and more than 2m from boundary

Second Schedule

Land at South Wood, Ling Lane, Scarcroft, Leeds LS14 3HT

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: 01 August 2022

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Scale: Not to scale

