
Appeal Decision

Unaccompanied site visit made on 6 September 2022

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

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 September 2022

Appeal Ref: APP/K3605/X/22/3292188

Land at 15 Netley Drive, Walton on Thames, Surrey, KT12 3QZ

- 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 lawful development certificate (LDC).
- An appeal is made by Mrs Asieh Ahmadzade against a decision of Elmbridge Borough Council.
- The application Ref 2021/3353 was dated 22 September 2021 and was refused by notice dated 4 January 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 lawful development certificate is sought is single storey rear extension.

Summary of decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary matters

1. An accompanied site visit was scheduled with both parties but in the absence of the Council's representative the Appellant provided access and I undertook an unaccompanied visit.
2. For the avoidance of doubt, I should explain that the planning merits of any operations are not relevant, and they are not therefore an issue for me to consider, in the context of this appeal which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. The Appellant raises issues concerning the Council's process and communication in determining the application the subject of this appeal. But there is no application for costs before me and these matters are not within my remit to consider in determining this appeal.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

5. The appeal site is a two storey terraced house located in a residential area. The appeal concerns an application for a lawful development certificate (LDC) for a proposed single storey rear extension.
6. Class A Schedule 2 Part 1 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission by virtue of permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions and limitations.
7. The Council refused the application on the basis that insufficient evidence had been provided to determine whether the proposed development would satisfy Class A. The supporting documentation with the application comprised an untitled and unscalable floor plan showing the proposed extension in blue and an annotation of its proposed depth at 3metres, a site location plan and existing floor plans.
8. I agree with the Council that the application did not provide sufficient evidence to justify a conclusion that Class A had been met. The supporting drawings did not include elevation drawings and did not indicate the height of the proposed extension. The onus falls on the applicant to describe the proposal with sufficient clarity to enable the Council to understand exactly what was involved and the plans in this case did not do so.
9. When submitting the appeal the subject of this decision the Appellant provided a new drawing (ref. 01RV1). This scaled drawing includes a proposed ground floor plan, roof plan and elevations. It shows a depth of 3m, an eaves height of 2.4m and a ridge height of 3.548m. The Council acknowledge that the extension shown on this new drawing may comply with Class A and refer to no additional information required but they argue that as s192 of the 1990 Act refers to lawfulness at the date of the application insufficient information was submitted with the application.
10. In determining this appeal I am exercising the power set out in section 195 of the 1990 Act, namely to determine whether or not the refusal was well founded. I am not confined to the narrow remit of reviewing the Council's decision. Section 195 concerns the refusal, ie the decision itself, not the reasons for it. To only consider the evidence that was before the Council at the time they made their decision denies the purpose of the LDC procedure which is to arrive at an objective decision based on the facts and evidence available at the time the decision is made. It is open to the Appellant to re-apply and therefore it would serve no useful purpose to dismiss the appeal if new evidence before me shows on a balance of probability that the proposed development would be lawful. I shall therefore determine this appeal based on the evidence before me, including drawing ref. 01RV1.
11. I conclude that based on the evidence before me, including drawing ref 01RV1, that the conditions and limitations of Class A are met and that the operations described would be lawful if begun at the time of the application.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

13. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of proposed operations which is considered to be lawful.

Sandra Prail

Inspector

Lawful Development Certificate

APPEAL REFERENCE APP/K3605/X/22/3292188
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 September 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(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed development of a single storey rear extension would comprise permitted development by virtue of article 3(1) and Schedule 2 Part 1 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It does not therefore require planning permission.

Sandra Prail

Sandra Prail

INSPECTOR

Date: 27 September 2022

Reference: APP/K3605/X/22/3292188

First Schedule

Single storey rear extension as shown on drawings submitted with application reference 2021/3353 dated 22 September 2021 and on appeal to the Planning Inspectorate including drawing Ref. 01RV1.

Second Schedule

Land at 15 Netley Drive, Walton on Thames, Surrey, KT12 3QZ

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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: 27 September 2022

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Not to scale

