
Appeal Decision

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/21/3278732

Land at 29 Sarum Green, Weybridge, Surrey, KT13 9RZ

- 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 Mr James Powell against a decision of Elmbridge Borough Council.
- The application Ref 2021/1350 was dated 14 April 2021 was refused by notice dated 23 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 lawful development certificate is sought is front dormer window, conversion of garage into living space and alterations to fenestrations following demolition of existing front dormer window.

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. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.
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. The issues drawn to my attention by a neighbour that relate to planning merits are therefore not within my remit to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

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

Reasons

4. The appeal site is a dwellinghouse located in a residential cul de sac. The appeal concerns an application for a lawful development certificate (LDC) for a

proposed front dormer window, conversion of garage into living space and alterations to fenestration following demolition of existing front dormer window.

5. Article 3 Class A Schedule 2 Part 1 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions and limitations. There is no dispute between the parties that Class A is met and I have no reason to disagree.
6. Article 3 Class B Schedule 2 Part 1 of the Order grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The Council refused the application the subject of this appeal on the basis that it did not meet Class B.1(c). There is no dispute that the proposed extension is to be added to a principal elevation. Having regard to the design and architectural features I agree. The issue between the parties is whether the proposed window fronts a highway.
7. The Council argue that the property follows the general building line of the rest of the properties on the road and is considered to front the highway that provides the main entrance to the property. They say that the development would face a highway albeit at an angle.
8. Class B.1 (c) provides that development is not permitted by Class B if any part of the dwellinghouse would as a result of the works extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and "fronts a highway". The Order does not define highway but it does define proposed highway (as having the same meaning as in s329 of the Highways Act 1980). The common sense established meaning of highway is a way over which the public have a right to pass and repass. Article 2(1) of the Order provides that a private way is a highway not maintainable at the public expense and any other way other than a highway.
9. Technical Guidance¹ has been published which whilst advisory provides useful guidance in the interpretation of permitted development rights. It provides that a highway is a public right of way such as a public road, public footpath and bridleway and that for the purposes of the Order it also includes adopted streets or private ways. It states that the extent to which an elevation of a house fronts a highway (for the purposes of Class B) will depend on factors such as: (i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway; (ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same can be true where there is significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.
10. The appeal site sits at the end of a cul de sac. The cul de sac turning head marks the end of the public highway known as Sarum Green. The area directly to the front of the house is a private garden and driveway (serving the property only). The private driveway joins Sarum Green. No part of the public highway is

¹ Permitted Development Rights for Householders Technical Guidance, September 2019, Ministry of Housing, Communities and Local Government.

directly in front of the principal elevation. The house does not face directly onto Sarum Green but sits at an angle of about 80 degrees. The neighbouring properties which all follow the same building line face directly onto Sarum Green and all properties including the appeal site share the same postcode.

11. I shall consider firstly whether the development can reasonably be said to front Sarum Green, the public highway. I have taken a common sense interpretation of the word 'fronts' and I have taken into account a number of factors including distance and orientation. There are no buildings in the intervening space and the distance between the house and the public highway is not substantial. The angle between the elevation of the house and the public highway is more than 45 degrees meaning that the elevation does not face the public highway and is visible at an oblique angle. There is no justification on the facts to not apply the presumption in the Technical Guidance that where the angle is more than 45 degrees the elevation will not normally be considered as fronting a highway. The general building line does not alter this conclusion.
12. The Technical Guidance states that the meaning of highway is a public right of way such as a public road, public footpath and bridleway and that for the purposes of the Order is also includes unadopted streets or private ways. It is therefore necessary to also consider whether the development can reasonably be said to front a private way. The driveway to the dwellinghouse in this case is private and although not gated the public do not generally have a right to enter it. It provides a short access route from the public highway to the front of a single property. It does not have the physical and relational characteristics of a private way. I consider as a matter of fact and degree that the development can reasonably be considered to front a private driveway and not a private way.
13. For the reasons given above and taking all relevant matters into account I conclude as a matter of fact in this case that the proposed development cannot be properly regarded as fronting a highway for the purposes of Class B and therefore benefits from permitted development rights.

Conclusion

14. 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

15. 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.

Lawful Development Certificate

APPEAL REFERENCE: APP/K3605/X/21/3278732
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 14 April 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 proposed development of a front dormer window, conversion of garage into living space and alterations to fenestration following demolition of existing front dormer window 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/21/3278732

First Schedule

Front dormer window, conversion of garage into living space and alterations to fenestration following demolition of existing front dormer window as shown on drawings submitted with application reference 2021/1350 dated 4 April 2021

Second Schedule

Land at 29 Sarum Green, Weybridge, Surrey, KT13 9RZ

NOTES

1. This certificate is issued solely for the purpose of section 191 or 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 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

