



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/M1595/X/22/3296589

68 Purfleet Road, Aveley, South Ockendon RM15 4DR

- 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 Lee Rolls against the decision of Thurrock Borough Council.
 - The application ref 21/02093/CLOPUD, dated 7 December 2021, was refused by notice dated 3 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 described as single storey side extension not exceeding 4m in height, not projecting further than the front and rear elevations of the original house. All drainage will be connected to existing drainage systems. There is no alteration to the current access.
-

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. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers, that is, without a site visit, without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute.
3. The parties were contacted on 21 October 2022. The appellant confirmed that he was content that the case proceeds without a site visit. The Council did not raise any objections to the case proceeding without a site visit by the deadline of 27 October 2022.
4. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
5. The description of the proposed development as set out in the application form and the banner above contains superfluous information. The Council amended the description before it issued its decision to 'single storey side extension',

which removes the unnecessary details about the proposed development, and I have determined the appeal on this basis.

Main Issue

6. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

7. The application was made under section 192(1)(b) of the Act which relates to proposed development in the form of operations.
8. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Part 1 Class A) relates to the enlargement, improvement or other alteration of a dwellinghouse. Part 1 Class A establishes, at A.1.(d), that development is not permitted if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.
9. The Council sets out, in its delegated report, that in all other respects the proposed extension meets the limitations and conditions of Part 1 Class A. However, the Council considers that the eaves height of the proposed extension would be higher than the eaves height of the existing rear element of the dwellinghouse. On this basis the Council considers that the proposed extension does not comply with the limitation set out in A.1.(d).
10. The plans show that the proposed development would not extend beyond the front and rear walls of the dwellinghouse. The enlarged part of the building is therefore the side not the rear. Consequently, the relevant eaves height measurement in respect of A.1.(d) is against the eaves height of the side elevation not the rear elevation. In relation to the side elevation the existing eaves height is at two storey level, significantly above the eaves height of the proposed side extension.
11. The existing rear extension against which the Council has judged the lawfulness of the proposed development is shown on the plans as entirely contained on the rear wall of the building. Thus, it is not on the same part of the building to be enlarged by the proposed development and is the incorrect reference point in this case.
12. The eaves height of the side extension would not exceed the height of the eaves of that part of the dwellinghouse being enlarged, improved or altered, which in this case is the side of the dwelling. As such the proposed development falls within the provisions of Part 1 Class A, in that regard.
13. Part 1 Class A establishes, at A.1.(i), that development is not permitted if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres. I asked the parties to advise of their respective positions given this restriction.
14. In the light of the further information provided by the appellant I have been able to confirm that the proposed extension meets this limitation. This is because the eaves height is measured from adjacent ground which in this case is the ground level of the neighbour's driveway.

Conclusion

15. 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 at 68 Purfleet Road, Aveley, South Ockendon RM15 4DR was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Sarah Dyer

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 7 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 proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required.

Planning permission is granted by Article 3(1) Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) since the development falls within Part 1 Class A of the GPDO.

Signed

Sarah Dyer
Inspector

Date: 7 November 2022

Reference: APP/M1595/X/22/3296589

First Schedule

The erection of a single storey side extension as shown on:

Drawing nos.

PL 1707-03-01, PL 1707-03-04, PL 1707-03-05, PL 1707-03-06, PL 1707-03-07,
PL 1707-03-08

Second Schedule

Land at 68 Purfleet Road, Aveley, South Ockendon RM15 4DR

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 /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: 7 November 2022

by Sarah Dyer BA BTP MRTPI MCMI

Land at: 68 Purfleet Road, Aveley, South Ockendon RM15 4DR

Reference: APP/M1595/X/22/3296589

Scale: Not to Scale



SITE LOCATION PLAN
Scale 1:1250



SCALE 1:1250

