



Appeal Decision

Site visit made on 31 January 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/C3620/X/21/3289009

Vine Lodge, Old Road, Buckland RH3 7DZ

- 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 C. Turner against the decision of Mole Valley District Council.
- The application ref MO/2021/1863/PCL, dated 30 September 2021, was refused by notice dated 5 November 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 the erection of a 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.

Main Issue

1. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposed development would constitute permitted development by virtue of the provisions of Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Background

2. The appeal site is located within the Buckland Conservation Area. Land within a conservation area is defined as 'article 2(3) land' at Part 1 of Schedule 1 of the GPDO. The appeal site therefore comprises article 2(3) land.
3. Paragraph A.2(b) of Class A, Part 1 of Schedule 2 of the GPDO states that, in the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
4. The Council considers that the proposal would not constitute permitted development by virtue of the provisions of Class A because it would be located to the side of the original principal elevation of the appeal dwelling.

Reasons

5. The appeal site comprises a detached bungalow surrounded by garden areas. There is no direct access to the appeal site from Old Road; it is served by a short cul-de-sac access off Old Road, which leads to the south-eastern corner of the appeal site. A driveway and detached garage are located at the southern end of the appeal site. Fencing and planting along the northern

- boundary separate the appeal site from Old Road. The proposed extension would be located on the north-west elevation of the appeal dwelling.
6. The main entrance to the appeal dwelling is located on its north-east elevation, which forms its gable end. The north-east and south-west elevations are shorter in length than the north-west and south-east elevations. The evidence indicates that the current layout and arrangement of the appeal dwelling is that of the original dwellinghouse, save for a small extension on the north-west elevation.
 7. I have been referred to the General Issues section of the relevant Technical Guidance¹ published by the Government. This part of the guidance does not define 'side elevation'. Page 22 of the guidance does, however, offer advice to help identify a wall forming a side elevation of the original dwellinghouse with regard to paragraph A.1(j) of Class A. It advises that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. The same principles are applicable to paragraph A.2(b) of Class A and are relevant to the specific circumstances of the appeal dwelling.
 8. The layout and access of the appeal site are such that the driveway, garage and a garden area are located to its front. The long elevation of the appeal dwelling facing to the south-east is experienced as its front elevation, even though it does not contain any entrance doors. This is because it faces to the front of the appeal site and is the first elevation seen by any persons entering the appeal site. The opposing long elevation facing to the north-west, surrounded by boundary fencing, planting and a more private garden area is experienced as the rear elevation. There is no evidence which indicates this would have been any different when the original building was erected.
 9. The Council refers to the north-east elevation of the appeal dwelling as its 'original principal elevation'. This is on account of it containing the main entrance door to the bungalow. However, even if that is the case, it does not follow that the north-west elevation must therefore comprise a side elevation of the original dwellinghouse.
 10. The narrow north-east and south-west elevations of the appeal dwelling are located close to the boundaries of the appeal site. On account of their positions in respect of the boundaries, garden areas and access of the appeal site, they would not have comprised front and/or rear elevations and will have always been side elevations of the original dwellinghouse. It is not uncommon for the main entrance door to a dwelling to be located on a side elevation.
 11. The proposed development would not extend beyond the north-east or south-west elevation walls. The proposed development would not therefore extend beyond a wall forming a side elevation of the original dwellinghouse.

Conclusion

12. 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 the erection of a single storey rear 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 1990 Act as amended.

¹ Permitted development rights for householders (2019)

Formal Decision

13. 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.

L Douglas

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 30 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of a single storey rear extension would comprise development within the meaning of section 55 of the Town and Country Planning Act 1990 (as amended), for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of a single storey rear extension as shown on the Drawing Numbers 2103-03-PL07 and 2103-03-PL09, since that development falls within Class A, Part 1 of Schedule 2 of that Order. The proposed erection of a single storey rear extension would therefore constitute permitted development.

Signed

L Douglas
Inspector

Date: 10 February 2023

Reference: APP/C3620/X/21/3289009

First Schedule

The erection of a single storey rear extension

Second Schedule

Land at Vine Lodge, Old Road, Buckland RH3 7DZ

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: 10 February 2023

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Scale: Not to Scale

