



Appeal Decision

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/C3620/X/21/3284236

10 Blackthorne Road, Bookham, Leatherhead, Surrey KT23 4BN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tim Teasdale against the decision of Mole Valley District Council.
 - The application ref MO/2021/1382/PCL, dated 18 July 2021, was refused by notice dated 16 September 2021.
 - The application was made under sections 192(1)(a) and (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 in the application form as: 'intend to change use of part of building from garage to habitable room. Changing garage door to upvc doors, insulating, raising wall heights.'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. No site visit has been carried out as all information needed for me to determine this appeal has been provided by the main parties¹.

Main Issue

3. Section 191(2) of the Act states that, for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them. Section 192(2) of the Act states that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposal are not relevant to the appeal.
4. Taking the above into account, the main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposal would breach a condition attached to a planning permission.

¹ Certificate of lawful use or development appeals: procedural guide, updated 21 December 2022. Paragraph 7.2.11.5. states: 'A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one'.

Reasons

5. The appeal site comprises a detached house with a single storey garage extension and garden areas. The evidence indicates that the garage was constructed in accordance with a conditional planning permission granted by the Council in 1986². The third condition of that planning permission states:

'Notwithstanding the provisions of the town and Country Planning General Development Order 1977 (or any Order revoking and re-enacting that order), the garage hereby permitted shall be used for the storage of private motor vehicles and ancillary domestic storage only'.
6. The proposal would include replacing the existing garage door on its front elevation with French doors, the construction of a step in-front of the door opening, and the installation of insulation and a new roof. The appellant has explained that this would enable them to use the garage space as habitable space.
7. The proposed works to the garage and its use as habitable space would conflict with the third condition of the planning permission granted in 1986. The proposed use of the garage would not accord with the condition because 'habitable space' would not comprise the storage of private motor vehicles and ancillary domestic storage only. The proposal would therefore be in breach of a condition, which could be subject to enforcement action. The proposal would not therefore be lawful with regard to section 191(2)(a) of the Act.
8. I have been referred to part of the Planning Practice Guidance which advises that an LDC may be granted on the basis that there is an extant planning permission for a development, which needs to comply with any conditions or limitations imposed on it by a grant of permission, 'except to the extent specifically described in the lawful development certificate'³. This merely clarifies that an LDC can confirm that certain uses or operations would be lawful, even if they may have previously been in breach of a planning condition. Such a situation may arise where a condition has been breached continuously for more than 10 years, where section 171B of the Act states no enforcement action may then be taken. There is no evidence which shows that is the case in this instance.
9. It has not therefore been demonstrated, on the balance of probabilities, that the proposal would be lawful.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use of part of building from garage to habitable room and changing garage door to upvc doors, insulating, and raising wall heights was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

L Douglas

INSPECTOR

² The Council's ref: MO/86/0142

³ Paragraph: 011 Reference ID: 17c-011-20140306