



Appeal Decision

Site visit made on 1 March 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/U2235/X/21/3287081
37 Forestdale Road, Boxley ME5 9NB

- 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 certificate of lawful use or development (LDC).
 - The appeal is made by Mr Steven King against the decision of Maidstone Borough Council.
 - The application Ref 21/504013/LAWPRO, dated 19 July 2021, was refused by notice dated 30 September 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: Single storey rear extension.
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Summary of Decision

1. 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

2. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the proposed development was well founded.

Reasons

3. In matters such as this, the onus is on the appellant to demonstrate his case on the balance of probabilities that the proposed single storey rear extension would be permitted development by virtue to the Order¹. My assessment is therefore very fact specific, based upon the evidence before me and my site visit.
4. The parties differ in respect of the overall height and eaves height for the proposed rear extension because the plot is on sloping ground. The appellant has then provided an annotated plan showing the extension with a height of 3.8m and eaves of 3m, whilst the Council contend the height would be 4.1m with an eaves of 3.2m.

¹ Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

5. However, the technical guidance² states that where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface next to the building. I am satisfied from my site visit that this is then as annotated on the appellant's plan.
6. Accordingly, the appellant's evidence demonstrates on the balance of probabilities that the proposed rear extension would be permitted development by virtue of the Order as the height would not exceed 4m with an eaves height not exceeding 3m, in accordance with the guidance. A certificate of lawfulness should therefore be granted.
7. However, should the appellant then erect an extension that is materially different to the plans before me, that would fall outside the scope of this certification.

Conclusion

8. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development 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.

Formal Decision

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

Paul T Hocking

INSPECTOR

² Ministry of Housing, Communities and Local Government, Permitted development rights for householders, Technical Guidance, September 2019



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 19 July 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 appellant has demonstrated on the balance of probabilities that the proposed single storey rear extension would be permitted development.

Signed

Paul T Hocking

Inspector

Date: 6 March 2023

Reference: APP/U2235/X/21/3287081

First Schedule

Single storey rear extension in accordance with drawings: Existing and proposed elevations, drawing no. 1163 existing and proposed elevations Rev B; Proposed plans, drawing no. 1163 proposed plans Rev A.

Second Schedule

Land at 37 Forestdale Road, Boxley ME5 9NB

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 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 not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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.

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 my decision dated: 6 March 2023

by **Paul T Hocking BA MSc MRTPI**

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Scale: DO NOT SCALE

