



Appeal Decision

Site visit made on 6 June 2023

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/Q4245/X/22/3308393
28 Welman Way, Altrincham, WA15 8WD

- 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 and Mrs Miller against the decision of Trafford Metropolitan Borough Council.
 - The application ref 108065/CPL/22, dated 11 May 2022, was refused by notice dated 19 July 2022.
 - The application was made under section 192(1) 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 conversion of garage into home office, including partial blocking up of garage door to make a window and creation of a new sideways facing window which faces onto private rear garden.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed development which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether, at the time of the application, the proposed conversion would have constituted development under S.55 of the Town and Country Planning Act 1990 (the Act) and if so, whether that development would be permitted development under the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The garage is the end garage in a row of garages, serving several dwellings, which is accessed off a communal driveway with a forecourt in front of them. The appeal garage is next to the appellant's dwelling.
4. S.55(1) of the Act defines the meaning of "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."
5. S.55(2) lists operations or uses of land that shall not be taken for the purposes of the Act to involve development. These include "(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such".

6. Therefore, the starting point is whether the garage falls within the curtilage of the dwellinghouse. For land to fall within the curtilage of a building, case law has established that it must be intimately associated with the building. The Technical Guidance¹ describes “curtilage” as “land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.”
7. The garage is in the same ownership as the dwellinghouse. It is next to the house and there is no land in any other ownership separating the garage from the house and garden. The dwelling’s private garden is at the side and rear of the garage and a door opens from the side of the garage onto the garden. There is a gate leading to the rear garden attached to both the garage and the house. This layout and the existing ancillary use of the building as a garage makes it intimately associated with the house. I note the Council’s claim that there was a “garden boundary structure” previously separating the garage from the garden but I have no details of such a structure before me.
8. I appreciate that the forecourt in front of the garage appears to be used as a shared surface and has an access shared with the other garages. Nevertheless, the forecourt is not part of the proposal and the shared surface leading to the garage is not a dissimilar situation to a garage being accessed directly off a public highway, which is also a surface used by multiple people. The fact that the garage is attached to others, two of which are more remote from their owners’ houses than is the appeal garage, does not make the appeal garage in communal use or outside of the residential curtilage of No 28. In my judgement, this simply means that the curtilage of the appeal dwellinghouse ends where the next property is attached.
9. As a matter of fact and degree, I conclude that the garage is within the curtilage of the dwellinghouse. Therefore, the use of the garage as a home office would not constitute development as set out in S.55(2)(d) of the Act.
10. In respect of the proposed external alterations, Class E(a) of Part 1 of Schedule 2 of the GPDO allows the provision within the curtilage of the dwellinghouse of “any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.” Therefore, as I have concluded that the appeal building is within the curtilage of the dwellinghouse, the external alterations would be permitted development. I appreciate that the garage was not constructed under Class E but Class E also applies to alterations of a building within the curtilage of a dwellinghouse.

Conclusion

11. For the reasons given above I conclude, on the evidence now before me, that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of the garage into a home office, including partial blocking up of garage door to make a window and creation of a new sideways facing window which faces onto private rear garden, was not well-founded and that the appeal should succeed.

¹ Permitted Development Rights for Householders Technical Guidance, MHCLG 2019

12. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Ms Watson

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 13 May 2022 the use and 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 use of the garage as a home office is not development under S.55 of the Town and Country Planning Act 1990 as the garage is within the curtilage of the dwelling. The external alterations comply with Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Ms Watson

Inspector

Date: 12 June 2023

Reference: APP/Q4245/X/22/3308393

First Schedule

Conversion of garage into home office, including partial blocking up of garage door to make a window and creation of a new sideways facing window which faces onto private rear garden

Second Schedule

Land at 28 Welman Way, ALTRINCHAM, WA15 8WD

Plan

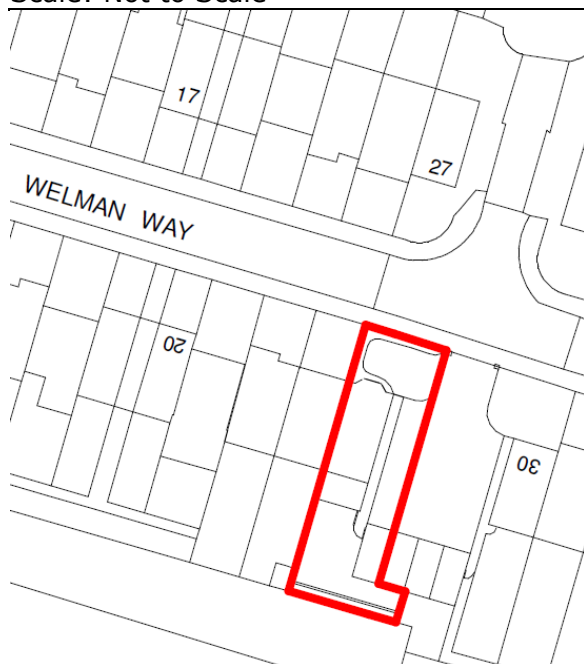
This is the plan referred to in the Lawful Development Certificate dated: 12 June 2023

by Ms Watson BA(Hons), MCD, MRTPI

Land at: 28 Welman Way, ALTRINCHAM, WA15 8WD

Reference: APP/Q4245/X/22/3308393

Scale: Not to Scale



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.