



Appeal Decision

Site visit made on 17 August 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/Y3615/X/22/3312029

67 Agraria Road, Guildford, GU2 4LG

- 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.
 - The appeal is made by Mr Daniel Jordan against the decision of Guildford Borough Council.
 - The application Ref 22/P/01511, dated 25 August 2022, was refused by notice dated 29 September 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 a single storey rear extension.
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Summary Decision: the appeal is allowed and a Certificate of Lawful use is granted in terms set out in the Formal Decision below.

Procedural matters

1. I conducted an unaccompanied site visit on 17 August 2023. I am satisfied that I could see all that I needed to inform my Decision from the public highway and that I do not need to enter the appeal property.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case 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 proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. The enlargement, improvement or other alteration of a dwellinghouse is permitted by Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations at Class A.1, A.2 and A.3. There is no dispute that

the proposed single storey rear extension accords with the limitations at A.2 and A.3, or with Class A.1 in all respects other than in relation to Class A.1(f). I see no reason to take a different view.

4. The main consideration in this case is therefore whether the proposed single-storey rear extension accords with the limitations at Class A.1(f): specifically, whether the enlarged part of the dwellinghouse would have a single storey and would:

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse,

or (ii) exceed 4 metres in height.

This consideration can be further narrowed in that the proposed extension would be single-storey and would not exceed 4 metres in height, such that the matter at hand is solely whether the host property is a detached dwellinghouse for the purposes of Class A.1(f)(i).

5. The application drawings are inconsistent in this respect. Some drawings (for example, Drawing No. ST_AUG_22_67 AGR_005 Rev C: Proposed Plans, Section and Elevations) clearly show that the host property is a detached dwellinghouse, albeit set further in from the southern boundary than the northern boundary. On the other hand, the Site and Locations Plan (Drawing No. ST_MAR 22_67 AGR_00: Rev C), shows the appeal property to be attached to the house to the north (No 69). Nevertheless, my site visit confirmed that the appeal property is as a matter of fact and degree a detached dwellinghouse. I recognise that the dwelling to the south (No.65) has been built to the boundary with the appeal property and that the dwelling to the north (No 69) has been extended to the boundary but, even so, those two buildings are not in any way attached to the appeal property.
6. The application drawings show that the depth of the proposed extension is exactly 4 metres. The dwellinghouse to be enlarged is a detached dwellinghouse and the proposed extension would therefore accord with Class A.1(f)(i).

Conclusion

7. 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 single storey rear extension at 67 Agraria Road, Guildford, GU2 4LG was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

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

Paul Freer
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 25 August 2022 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 proposed single storey rear extension is permitted by Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer
INSPECTOR

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First Schedule

Single storey rear extension (as shown on Drawing Nos. ST_AUG_22_67 AGR_001 Rev C; ST_AUG_22_67 AGR_004 Rev C; ST_AUG_22_67 AGR_005 Rev C)

Second Schedule

Land at 67 Agraria Road, Guildford, GU2 4LG

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: 23 August 2023

by **Paul Freer BA (Hons) LLM PhD MRTPI**

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Scale: Not to scale

