



Appeal Decision

Site visit made on 8 January 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal Ref: APP/M3645/X/22/3298335

Carewell Lodge, Racecourse Road, Lingfield, RH7 6PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the "Act") against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Outward Ltd against the decision of Tandridge District Council.
 - The application ref: TA/2022/81, dated 14 January 2022, was refused in part by the Council by notice dated 31 March 2022.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is described as a 'side extension, triple garage and swimming pool building'.
-

Decision

1. 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.

Preliminary Matter

2. The description of development for which a LDC is sought as stated above in the banner heading is taken from the application form. The Council made a split decision in relation to the matters sought within the application. The Council granted a LDC in relation to a triple garage and swimming pool and I have been provided with a copy of this LDC. As such, this appeal focuses on the side extension.

Main Issue

3. The main issue is whether the Council's decision to refuse a LDC was well-founded. This issue turns on whether the proposed development would be permitted development by virtue of Article 3(1) and Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the "GPDO").

Reasons

4. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit do not fall to be considered. In this appeal, the question to be asked is whether or not the side extension would have been lawful for planning purposes on the date of the LDC application, namely the 14 January 2022.
5. Schedule 2, Part 1, Class A of the GPDO sets out that the enlargement, improvement or other alteration of a dwellinghouse is permitted development subject to the limitations and conditions as set out in the GPDO. Development is not permitted by Class A where: A.1(e) *the enlarged part of the*

dwellinghouse would extend beyond a wall which i) forms the principle elevation of the original dwelling house; or ii) fronts a highway and forms a side elevation of the original dwelling house.

6. The appeal site comprises a substantial corner plot with a detached property, set back from the highway. Its front elevation is orientated towards St Piers Lane. The side elevation, to which the proposed extension would be attached to, is positioned towards Racecourse Road. It is the Council's case that the proposed development would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse, and therefore fails to comply with criterion A.1(e)(ii) of the GPDO. Consequently, it would not be permitted by Class A.
7. The Technical Guidance – Permitted development rights for householders (2019)(TG), provides assistance in the interpretation and application of the GPDO. The document explains that *'the extent to which an elevation of a house fronts a highway will depend on factors such as:*
(i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;
(ii) the distance between the house and the highway – in cases where that distance is substantial, it is unlikely that a building can be said to front a highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway'.
8. From the evidence before me and my inspection of the site, it appears that the side elevation is broadly parallel with the highway. There is no suggestion that land between the building is in different ownership or use between the highway and the curtilage of the house. The main area of dispute is whether the distance between the original dwelling house and the highway means that the building cannot be said to front a highway.
9. In assessing whether the distance is substantial, the Council and appellant have each cited a different figure within their evidence. Neither party has explained how they have arrived at their figure. The appellant suggests a figure *'of some 25 metres at the nearest point'* between the property and the highway whereas the Council's statement sets out that the side elevation of the extension would be some 23 metres away from the highway. However, the wording of the TG is clear in that it requires consideration of the distance between the highway and the original house rather than any resultant size of gap that would be created by the appeal scheme.
10. Both the appellant and the Council's figures are therefore likely to underestimate the distance between the highway and the original dwelling house. In any event, no definition of 'substantial' is given within the GPDO or the TG and therefore an assessment of what would constitute a substantial distance will depend on the particular circumstances of each case as a matter of fact and degree.
11. Although the land slopes upwards from the highway and the dwelling occupies an elevated position above the road, the dwelling is well set back into the appeal site. Mature vegetation along Racecourse Road significantly limits views into the site, resulting in limited and fleeting views towards the existing side elevation. I accept that vegetation or boundary treatments could change or be

removed over time, however, the intervening distance between the side elevation of the existing dwelling and the highway is sizeable and so even if the vegetation was removed, the visual relationship of the dwelling in relation to the roadside would not be particularly apparent to users of the highway.

12. Reference has been made to a previous appeal decision¹, however, among other things, this concerned a distance of some six metres and thus it is not comparable to the appeal scheme before me. I have determined the appeal before me with regards to its individual circumstances and their application to the GPDO.
13. In my view, the distance between the side elevation of the original dwelling house and the highway can be regarded as 'substantial' and thus the side extension would not extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse.
14. Thus, for the reasons given above, I find on the balance of probabilities, that the side extension is development which is permitted by Part 1, Class A, Schedule 2 of the GPDO.

Conclusion

15. 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 a side extension to the property was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the Act.

E Brownless

INSPECTOR

¹ APP/N4720/X/19/3238772

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 14 January 2022 the operation 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 side extension would be permitted development by virtue of Article 3(1) and Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and the triple garage and swimming pool building would be permitted development by virtue of Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

E Brownless

INSPECTOR

Date: 06 February 2024

Reference: APP/M3645/X/22/3298335

First Schedule

Side extension, triple garage and swimming pool building in accordance with the following drawings: Plan 1 block plan side extension and outbuildings; Plan 16 Proposed south rear elevation; Plan 17 Proposed side extension west elevation; Plan 18 Proposed side extension north elevation; Plan 19 Proposed side extension east elevation; Plan 25 Garage; Plan 26 Pool building.

Second Schedule

Carewell Lodge, Racecourse Road, Lingfield, RH7 6PQ

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: 06 February 2024

by E Brownless BA (Hons) Solicitor (non-practising)

Land at: Carewell Lodge, Racecourse Road, Lingfield, RH7 6PQ

Reference: APP/M3645/X/22/3298335

Scale: Not to Scale

