



Appeal Decision

Site visit made on 14 March 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 26th March 2024

Appeal Ref: APP/J2210/X/22/3310031

15 Mill View Rd, Herne, Herne Bay, Kent, CT6 7JF

- 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 Mrs Piotr Zembrowski against the decision of Canterbury City Council.
 - The application ref CA/22/00987, dated 23 May 2022, was refused by notice dated 22 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 proposed dormer to side elevation, rooflight to side elevation together with driveway extension and single-storey detached outbuilding.
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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 operation which is found to be lawful.

Reasons

2. The appeal property is a detached dwellinghouse with front and rear gardens. The application was made to establish whether proposed alterations to the roof, a driveway extension and a rear outbuilding would benefit from planning permission granted by the General Permitted Development (England) Order 2015 (the GDPO). The relevant classes are within Schedule 2, Part 1, which concerns development within the curtilage of a dwellinghouse. Subject to limitations and conditions, Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, Class E permits buildings etc incidental to the enjoyment of a dwellinghouse, and Class F permits hard surfaces incidental to the enjoyment of a dwellinghouse. The Council has acknowledged that the roof alterations and hardstanding proposed would comply with the relevant Classes, but it refused to grant the LDC sought on the basis that the proposed outbuilding would not be for purposes incidental to the enjoyment of the dwellinghouse because it would include a salon, a business use.
3. I could see on my site visit that an outbuilding has already been constructed to the rear of the dwellinghouse, though it was incomplete. However, since the application concerns proposed development I have had regard only to the plans submitted. The outbuilding shown on the application plans had internal spaces labelled "garage", "salon" and "WC". The appellant states that they were not aware that the company preparing the plans had labelled one space as a salon. They claim that that space is actually intended to be for storage, and have

subsequently submitted an amended plan labelling that space "storage". The Council has confirmed that its position is that if the building is to be used for storage as per the appellant's confirmation and a revised drawing is submitted to confirm this, then the use of the building would be incidental, and the building would therefore be lawful. I see no reason to come to a different view. I have noted the concerns of some neighbours about potential business uses and the impact on residential amenity and local traffic, but if the outbuilding was to be used for business purposes it would potentially comprise a material change of use requiring express planning permission, in the absence of which such use would be vulnerable to enforcement action.

4. As it stands however, the purposes for which the outbuilding is required are ones that can be considered as incidental to the enjoyment of the dwellinghouse as such, and the submitted plans show that it complies with the limitations of Class E. It would therefore benefit from the planning permission granted by section 3(1) of the GDPO. Accordingly all of the GDPO requirements for the developments proposed are met and I shall grant the certificate applied for.
5. In coming to this view I note that concern has been expressed by a neighbour about the potential impact of the outbuilding on land stability, but this is not one of the considerations relevant to Class E. Another matter raised concerns the possibility that there the property deeds contain a clause or covenant which precludes the erection of any permanent structure in the garden, but this is a matter of private law which can have no bearing on permitted development rights.
6. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed dormer to side elevation, rooflight to side elevation together with driveway extension and single-storey detached outbuilding 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.

Paul Dignan

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 23 May 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 dormer to side elevation, rooflight to side elevation together with driveway extension and single-storey detached outbuilding comply with the requirements of Class B (enlargement of a dwellinghouse consisting of an addition or alteration to its roof), Class E (buildings etc incidental to the enjoyment of a dwellinghouse), and Class F (hard surfaces incidental to the enjoyment of a dwellinghouse) of Schedule 2, Part 1 of the General Permitted Development (England) Order 2015 (the GDPO). The proposal plans are those submitted with application ref. CA/22/00987, with the exception that the relevant plan for the Class E outbuilding is that submitted to the Planning Inspectorate by email on 22 January 2023 and titled "garage only drawing".

Signed

Paul Dignan

Inspector

Date: 26th March 2024

Reference: APP/J2210/X/22/3310031

First Schedule

Proposed dormer to side elevation, rooflight to side elevation together with driveway extension and single-storey detached outbuilding.

Second Schedule

Land at 15 Mill View Rd, Herne, Herne Bay, Kent, CT6 7JF

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 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, 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 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 the Lawful Development Certificate dated: 26th March 2024

by Paul Dignan MSc PhD

Land at: 15 Mill View Rd, Herne, Herne Bay, Kent, CT6 7JF

Reference: APP/J2210/X/22/3310031

Scale: Not to Scale

