



Appeal Decision

Site visit made on 20 February 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2024

Appeal Ref: APP/C3620/X/23/3322709

Mill House, Rookery Drive, Westcott, Dorking, Surrey RH4 3LQ

- 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 David Pleece against the decision of Mole Valley District Council.
 - The application ref MO/2022/0902/PCL, dated 17 April 2022, was refused by notice dated 25 July 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 described as 'Demolition of summer house and rebuild volume on side of garage form ancillary residential accommodation'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I visited the site on 20 February 2024, however, the appellant was not present and I was unable to gain access into the site. Nevertheless, I was able to see the garage, the subject of the appeal, from the public domain and am satisfied the appeal can be determined on the evidence before me.
3. The Council refers to the proposal as 'the erection of a single storey extension to existing garage to be used as ancillary residential accommodation' in its decision notice. However, there is no power for a local planning authority to modify the terms of an LDC. It is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of. Since I have no evidence the appellant agreed to the wording used by the Council, I shall consider the appeal on the basis of the appellant's wording in the application form.

Main Issue

4. The main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

5. An application under S192(1)(b) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described

in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

6. Section 191(2) of the Act sets out for the purposes of the Act, uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development would be lawful.
8. The Council issued a certificate on 18 March 2022, reference MO/2021/1547/ECL, confirming that a garage and a conservatory have been *in situ* for a period of more than 4 years and are therefore lawful. The appellant is seeking, through this appeal, confirmation that it would be lawful to relocate the volume of the conservatory (referred to as the summer house) and add it to the existing garage block to use the building as ancillary residential accommodation.
9. Section 55 of the Act sets out the meaning of development, which means 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. There are, in effect, two elements to the appeal scheme: the demolition of the summer house and proposed works to the garage to form (ancillary) residential accommodation.

Demolition

10. Section 55(1) and (1A) of the Act provide that building operations include demolition of buildings. The Town and Country Planning (Demolition – Description of Buildings) Direction 2021 (the 2021 Direction) provides that the demolition of any building of which the cubic content, measured externally, does not exceed 50m³ shall not be taken to involve the demolition of land for the purposes of the Act. However, the appellant has identified the volume of the summer house to be just over 106m³ and so it is not exempted from development under section 55(2)(g) of the Act and the 2021 Direction.
11. Part 11, Class B, of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits any building operation consisting of the demolition of a building, subject to conditions and limitations. B.2(b)(i) states that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site.
12. However, I have no substantive evidence to show the appellant has complied with the conditions set out under B.2. Consequently, the demolition of the summer house is not permitted by the GPDO and, since it is development for the purposes of the Act, planning permission would be required. It would

therefore not have been lawful if instituted or begun on the date of the LDC application.

Rebuild volume on side of garage

13. The 'rebuilding of volume on side of garage' would involve extending¹ the garage building to the south and would constitute operational development for the purposes of the Act. Part 1 of Schedule 2 of the GPDO permits development within the curtilage of a dwellinghouse. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. However, the garage does not constitute a dwellinghouse, rather it is an outbuilding within the curtilage of a dwellinghouse.
14. Class E permits the provision within the curtilage of the dwellinghouse of any building or enclosure...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. The proposed ground floor plan show that the building would be laid out with three bedrooms, a bathroom, kitchen and dining room/lounge. The appellant states that the building would be used by their son and his wife and would not be used as a separate dwelling, or separated from the main house.
15. The Permitted development rights for householders: Technical Guidance (2019) advises that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. While I have no substantive evidence to show the building would not be used as a separate dwelling, even if it was to be used as part and parcel of the main dwelling (and therefore no material change of use would occur), given the provision of primary living accommodation, it would not be for a purpose incidental to the dwellinghouse and so would not be permitted by Class E.
16. Furthermore, even if I had found the garage would be for a purpose incidental to the dwellinghouse, it does not comply with a number of limitations set out under Class E. For example, development is not permitted by Class E if (c) any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The garage is situated on land forward of the principal elevation of the dwellinghouse. Development is also not permitted by Class E if (e)(i) in the case of a building with a dual pitched roof, the height of the building would exceed 4 metres. The proposed garage would exceed 4 metres in height.
17. The appeal site is located within an Area of Outstanding Natural Beauty (AONB). In the case of any land within an AONB, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres and any part of the building would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. The garage is located more than 20 metres from the side of the dwellinghouse, would exceed 10 square metres and would be situated on land between the side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

¹ Notwithstanding the appellant's suggestion that the application was not for an extension.

18. The proposed works to the garage are therefore not permitted by the GPDO and is development for which planning permission is required and would not have been lawful if instituted or begun on the date of the LDC application.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the 'demolition of summer house and rebuild volume on side of garage form ancillary residential accommodation' was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR