



Appeal Decision

Site visit made on 10 July 2024

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 July 2024

Appeal Ref: APP/Y3615/X/23/3325824

53 Waltham Avenue, Guildford, GU2 9QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development .
 - The appeal is made by Mr Richard Bee against the decision of the Guildford Borough Council.
 - The application Ref: 22/P/01851, dated 31 October 2022, was refused in part by notice dated 25 January 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The part of the development for which a LDC is sought is a proposed outbuilding located within the curtilage of the dwellinghouse following the demolition of an existing outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate (LDC) describing the proposed development which is considered to be lawful.
2. I have taken the description of the proposed development used in the banner heading above from the original application form submitted to the Council. In an application for a LDC the onus is on the applicant to demonstrate, on the balance of probabilities, that the proposed development would be lawful.
3. The **main issue** is whether the Council's decision to refuse to grant a LDC was well-founded. This turns on whether or not the proposed demolition of the existing outbuilding and erection of the proposed new outbuilding benefit from the planning permissions granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order"), referred to generally as "permitted development".
4. The Council do not dispute that the demolition of the existing outbuilding would be permitted development by virtue of Article 3 and Schedule 2, Part 11, Class B of the Order, and I have no reason to consider otherwise. Turning to the Council's part refusal of the LDC in respect of the proposed new outbuilding, their conclusion was based on a misunderstanding of what was the "principal elevation" for the purposes of Schedule 2, Part 1, Class E of the Order.
5. However, during the course of the appeal the Council now accepted that the host dwellinghouse has only one principal elevation and consequently the proposed outbuilding would not be situated on land forward of a wall forming the principal elevation of the original dwellinghouse, thereby complying with

the limitation at Class E.1(c) and all other conditions and limitations of Class E. Having regard to all of the evidence before me I come to the same conclusion.

Conclusion

6. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a lawful development certificate in respect of a proposed outbuilding located within the curtilage of the dwellinghouse following the demolition of an existing outbuilding at 53 Waltham Avenue, Guildford, GU2 9QF, was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

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 31 October 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 reasons:

1. The proposed demolition of the existing outbuilding would benefit from planning permission granted by Article 3(1) and Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
2. The proposed erection of a new outbuilding, as shown on the plans submitted with the application, would benefit from planning permission granted by Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Thomas Shields

Inspector

Date: 23 July 2024

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First Schedule

Proposed outbuilding located within the curtilage of the dwellinghouse following the demolition of an existing outbuilding.

Second Schedule

Land at 53 Waltham Avenue, Guildford, GU2 9QF.

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: 23 July 2024

by Thomas Shields DipURP MA MRTPI

Land at: 53 Waltham Avenue, Guildford, GU2 9QF

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Do not Scale

