



Appeal Decision

No site visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/Z5630/X/23/3320327

49 Staunton Road, Kingston upon Thames KT2 5JR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Christina Penelope Jordan against the Council of the Royal Borough of Kingston Upon Thames.
 - The application ref 23/00050/CEU is dated 9 January 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is conversion of an integrated garage into a habitable room.
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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 existing use which is found to be lawful.

Preliminary Matters

2. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the appellant and the evidential test is the balance of probability. For this reason, a site visit to the property is not necessary as it would not assist my assessment of the evidence.

Reasons

3. The **main issue** is whether the Council's deemed refusal to grant an LDC was well-founded.
4. The plans provided show the appeal property to be a dwellinghouse falling within Class C3: Dwellinghouse of the Town and Country Planning (Use Classes) Order 1987 as amended. The plans also show the dwellinghouse to have a single storey flat roofed projection to its front elevation. This projection is shown to have a garage door.
5. It would be reasonable to conclude from the plans provided that the integral garage formerly occupied this single storey projection and part of the adjacent ground floor area. The floor plans show this area to now be used as part of the dwellinghouse as a habitable room.
6. The dwellinghouse, integrated garage and outside amenity space/garden formed a single planning unit. This planning unit has not changed. Use of the integrated garage was incidental to the primary residential use of the dwellinghouse. I have not been made aware of any restrictive planning

conditions which would have prevented the use of the integrated garage as a habitable room. The use of the integrated garage as a habitable room does not therefore constitute development as defined in s55 of the Town and Country Planning Act 1990 as amended (the 1990 Act).

7. S191(2) of the 1990 Act confirms that uses and operations are lawful at any time if '*(a) no enforcement action may then be taken in respect of them...because they did not involve development...*'. The appellant has shown, on the balance of probability, that the conversion of an integrated garage into habitable room did not involve development.

Conclusion

8. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the conversion of an integrated garage into a habitable room that refusal would not have been 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).

M Madge

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 9 January 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling and integrated garage formed a single planning unit, which has not changed. Use of the integrated garage was incidental to the primary residential use of the dwellinghouse. The use of the integrated garage as a habitable room does not constitute development as defined in s55 of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Signed

M Madge

Inspector

Date: **[20 November 2024]**

Reference: APP/Z5630/X/23/3320327

First Schedule

Conversion of integrated garage as a habitable room.

Second Schedule

Land at 49 Staunton Road, Kingston Upon Thames KT2 5JR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **[20 November 2024]**

by **M Madge**

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Scale: Not to Scale

