



Appeal Decisions

Site visit made on 8 January 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 15th April 2025

Appeal A Ref: APP/C3620/X/24/3346917

8-10 Leith View, North Holmwood, Dorking RH5 4TG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Stevens against the decision of Mole Valley District Council.
 - The application ref: MO/2024/0105/PCL, dated 19 January 2024, was refused by notice dated 19 March 2024.
 - The application was made under section 192(1)(a) and 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is the combination of 8 and 10 Leith View into a single dwellinghouse and internal works therein; the installation of patio doors to the rear elevation; the erection of solar panels on the roof; and the installation of a log burner and flue.
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Appeal B Ref: APP/C3620/X/24/3346918

8-10 Leith View, North Holmwood, Dorking RH5 4TG

- The appeal is made under section 195 of the 1990 Act against a refusal to grant a LDC.
 - The appeal is made by Mr & Mrs Stevens against the decision of Mole Valley District Council.
 - The application ref: MO/2024/0520/PCL, dated 2 April 2024, was refused by notice dated 11 June 2024.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is formation of openings in the internal party wall between 8 and 10 Leith View; the installation of patio doors to the rear elevation; the erection of solar panels on the roof; and the installation of a log burner and flue.
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Decisions

Appeal A

1. The appeal is allowed in respect of the combination of 8 and 10 Leith View into a single dwellinghouse and internal works therein, the installation of patio doors to the rear elevation and the installation of a log burner and flue and attached to this decision is a certificate of lawful use or development describing the proposed use and operation which is found to be lawful. The appeal is dismissed in respect of the erection of solar panels on the roof.

Appeal B

2. Since another LDC certifying that an equivalent use and virtually the same operational development is lawful serves no useful purpose no further action will be taken in connection with this appeal.

Preliminary Matters – Appeal A and Appeal B

3. As set out above there are two appeals on this site. They relate to the same site, the same appellants and similar developments for which LDC applications were submitted. To avoid duplication, I have dealt with them together, except where otherwise indicated.
4. Both application forms for the LDC applications indicated that the proposals did not consist of a change of use of the land or buildings. The appellants have stated that, regarding Appeal B, that both 8 (No 8) and 10 (No 10) Leith View would retain *'all trappings of independence, for example separate kitchens and bathrooms, water and electricity supplies, postal addresses and so on'*. It is clearly apparent that the later LDC application (Appeal B) was submitted in a bid to overcome the reason for refusal associated with the earlier LDC (Appeal A). Nevertheless, both LDC applications relate to similar operational development and the Council considered in both cases that the proposal would result in a material change of use requiring planning permission. Given the description of the proposal relating to Appeal A it is clear that the appellants in that case sought a LDC relating to that scheme as a whole, including the use, and not just the building works. I have dealt with the appeals on this basis.

Main Issue – Appeal A and Appeal B

5. The main issue in both appeals is whether the Council's decision is well-founded. This turns on whether, on the date of the LDC application, the proposal amounted to 'development', as defined by section 55 of the 1990 Act.

Reasons

6. Section 55 of the 1990 Act states that *"development," 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*. At section 55(3)(a) of that Act it adds that, for the avoidance of doubt, *'the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used'*. There is no corresponding clarification for the reverse situation, where two or more dwellinghouses are subsequently used as a single dwellinghouse, as proposed in this case.
7. That situation was, however, considered by the High Court in *Richmond upon Thames LBC v SSETR & Richmond upon Thames Churches Housing Trust* [2001] JPL 84 (the Richmond judgment), which concerned an appeal decision relating to the proposed amalgamation of 7 flats to form a single dwellinghouse. From that judgement it is clear that whether or not there is a material change of use in those circumstances is a matter of fact and degree and requires the planning consequences of the proposed change to be considered. The extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use.
8. No 8 and No 10 form part of a terrace of dwellings in a mainly residential area. They are both one-bedroom dwellings laid out over 2 floors. The floor plans submitted with both LDC applications show new door openings in the dividing wall between the 2 dwellings. There would be one new opening on the ground floor and another on the first floor. The only difference between the floor plans

associated with the LDC applications is the flights of stairs and the log burner positions. In Appeal A there is no set of stairs shown in No 10 and the log burner is shown in what appears to be an entrance hall. In Appeal B there are sets of stairs in both No 8 and No 10 and the log burner is shown in the living room of No 10.

9. The Council considers that the conversion of 2 one-bedroom dwellings to a 2-bedroom dwelling constitutes a material change of use which therefore requires planning permission and this argument rests on the Richmond judgment. In the Planning Officer's Reports for the LDC applications Policy HSG1 of the Mole Valley Local Plan (MVLDP) is cited. That policy states that *'development involving a net loss of existing or proposed residential accommodation or land will not normally be permitted. Where redevelopment proposals involve the loss of residential accommodation or land, replacement residential accommodation will be required within the site or elsewhere, but in the latter case, only if the alternative site would not otherwise be allocated for housing purposes.'* In addition, Local Policy CS3 is also cited which states that *'the Council will require housing proposals to take into account and reflect local housing needs in terms of the tenure, size and type of dwellings'*.
10. A new Local Plan has been adopted since the LDC applications were submitted. Policy H1 of the Mole Valley Local Plan (the LP) relates to Housing Delivery, and it indicates that the housing requirement for Mole Valley is to deliver 336 homes each year in the plan period. The supporting text to that policy states that *'the Council is confident it can deliver a five-year housing land supply against its constraints-based target for much of the plan period and certainly up until the time of the first review.'*
11. LP Policy H9 relates to housing mix and the supporting text to that policy states that *'as important as the quantity of new housing is the type of new housing'*. With regard to market housing the supporting text indicates that future housing requirements for 2-bed units is 45%. That figure is reflected in the policy requirement of LP Policy H9. The LP Policy H9 market housing proportion of one-bed units expected to be delivered under that policy is 25%.
12. The Council argues that there would be a loss of smaller residential units and that the proposals would result in a loss of one residential unit which would be contrary to MVLDP Policy HSG1. At the times of the Planning Officer's Reports the Council stated that it could demonstrate 4.4 years of Housing Land Supply and that the Council's latest Housing Delivery Test result was below 75% and was currently at 58%.

Appeal A

13. With regards to Appeal A, the character of the residential occupation of the composite dwelling would not be materially different to the residential occupation of the separate dwellings. The proposal would remove 2 one-bedroom dwellings and replace them with a 2-bedroom dwelling resulting in the loss of one unit of residential accommodation. The proposal would have been contrary to MVLDP Policy HSG1.
14. Whilst, the LP was not the adopted development plan at the dates of the LDC applications LP Policies H1 and H9 and their supporting text indicate that the Council is now confident that it can demonstrate a five-year housing land supply;

that 336 homes per year are required to be delivered in the plan period and that 45% of all market housing required to be delivered is to have 2 bedrooms. The proposal would result in the loss of 2 one-bedroom units. However, the largest proportion of future market housing required in the Council's area is for 2-bedroom dwellings. Therefore, the proposal would not have an adverse effect on future housing mix and it would have complied with Local Policy CS3.

15. Against that background, in my judgement the loss of one residential unit would have only a de minimis effect, and therefore not a material effect, on the Council's ability to deliver housing growth and a 2-bedroom dwelling would reflect the largest proportion of required market housing. Therefore, it would not have any significant planning consequences and it would not therefore amount to a material change of use.
16. Turning to the proposed operational development the internal alterations would not involve development as indicated by section 55 (2)(a)(i) of the 1990 Act. The patio doors on the rear elevation would be largely screened from the public realm and as such they would not materially affect the external appearance of the building and would not involve development as indicated by section 55 (2)(a)(ii) of the 1990 Act.
17. Schedule 2, part 1, class G (Class G) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) relates to chimneys, flues etc on a dwellinghouse. The evidence before me indicates that only clause (b) is relevant in this case and the submitted drawings illustrate that the height of the flue would not exceed the highest part of the roof by 1 metre or more. As such, the flue for the log burner would be permitted development for the purposes of Class G of the GPDO.
18. Schedule 2, part 14, class A (Class A) of the GPDO relates to the installation, alteration or replacement of microgeneration solar PV or solar thermal equipment on a dwellinghouse. The submitted plans indicate the positioning of the solar panels on the front elevation of No 8. I note that the appellant has stated that the solar panels would be designed to meet the conditions and limitations of this class of the GPDO. However, the submitted plans have no specific details in relation to how far the panels would protrude beyond the roof slope. As a result, I cannot conclude that the solar panels would be permitted development for the purposes of Class A of the GPDO. In this respect, the appeal fails.

Appeal B

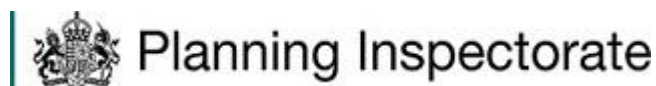
19. As stated previously, the scheme proposed within the later LDC application is very similar to that I have considered within Appeal A. Even if I had agreed with the Council that the scheme would result in the conversion of the building to one 2-bedroom dwelling it would not constitute a material change of use for the reasons given within Appeal A. The operational development of the internal opening, patio doors and flue would not involve development and would be permitted development under Class G of the GPDO respectively. Moreover, for the same reasons as cited in Appeal A I cannot conclude that the solar panels would be permitted development for the purposes of Class A of the GPDO. Essentially, the LDC applications relate to such similar schemes that another LDC certifying that an equivalent use and virtually the same operational development is lawful serves no useful purpose. As such, I conclude that no further action will be taken in connection with this appeal.

Conclusion – Appeal A

20. 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 for the combination of 8 and 10 Leith View into a single dwellinghouse and internal works therein, the installation of patio doors to the rear elevation and the installation of a log burner and flue is not well-founded and that the appeal should succeed in those respects. The Council's refusal to grant a certificate of lawful development in respect of the erection of solar panels on the roof was well-founded and that the appeal in respect of that part of the proposal should fail. I will exercise accordingly the powers transferred to me in section 195(2) and 195(3) of the 1990 Act.

D Boffin

INSPECTOR



Lawful Development Certificate – Appeal A

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 19 January 2024 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use and operational development do not constitute development for which planning permission is required.

Signed

D Boffin

Inspector

Date: 15th April 2025

Reference: APP/C3620/X/24/3346917

First Schedule

The combination of 8 and 10 Leith View into a single dwellinghouse and internal works therein, the installation of patio doors to the rear elevation and the installation of a log burner and flue as shown on submitted Drawing 3.

Second Schedule

Land at 8-10 Leith View, Dorking RH5 4TG

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 and operations described in the First Schedule taking place on the land specified in the Second Schedule were 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 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 – Appeal A

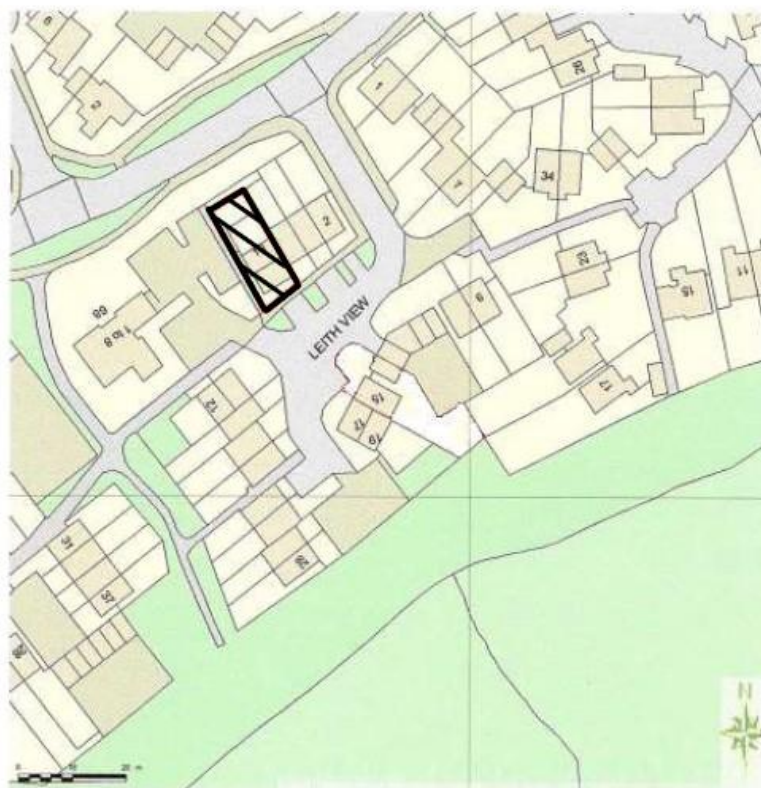
This is the plan referred to in the Lawful Development Certificate dated: 15th April 2025

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land at: 8-10 Leith View, Dorking RH5 4TG

Reference: APP/C3620/X/24/3346917

Scale: Not to Scale



1:1250 @A4

Site plan

8 and 10 Leith View
Dorking

Drawing 1