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## Appeal Decision

Site visit made on 10 December 2025

**by L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 09<sup>th</sup> January 2026**

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**Appeal Ref: APP/K3605/X/25/3370266**

**Rear of 85 Queens Road, Weybridge, Surrey KT13 9UQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Birchwood Commercial Ltd against the decision of Elmbridge Borough Council.
  - The application ref 2024/3298, dated 18 December 2024, was refused by notice dated 13 March 2025.
  - The application was made under section 191(1)(b) of the Act.
  - The development for which a certificate of lawful use or development is sought is described as 'Confirmation that the single-storey rear extension (2021/0008) was completed prior to the alterations to the internal layout'.
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### Decision

1. The appeal is dismissed.

### Main Issue

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

### Background

3. The appeal site comprises a building that has been extended to the rear. The front part of the ground floor is in use as a restaurant. The rear extension has been split into two units which are not accessible from within the restaurant. One of those units comprises the north-western side of the extension (the NW unit); the other comprises the south-eastern side of the extension (the SE unit).
4. Planning permission reference 2021/0008 was granted on 5 March 2021. It authorised development described as 'single-storey rear extension for Use Class E (c) (ii) Professional Services (62.8 sqm) with rear access gate following demolition of existing rear projection' (the 2021 PP). The approved plans<sup>1</sup> show a rear extension accessible from the restaurant by two internal doorways, comprising a ground floor room with a single staircase leading to a single roof space room. The external depth of that proposed extension was annotated as 4.2 metres (m). The approved plans also show that the rear elevation wall of the proposed rear extension would have had one doorway and three windows.
5. Planning permission was subsequently granted under section 73A of the Act on 31 March 2022 for development described as 'Retrospective Variation of Condition 2 (Approved Plans) of planning permission 2021/0008 (Rear extension) to change

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<sup>1</sup> P1105 and P1106

window to a door and increase size of existing window on the rear projection' (the 2022 PP). The plans<sup>2</sup> approved as part of the 2022 PP show deviations from the 2021 PP: an internal wall was proposed to split the rear extension approximately in half to create what are now the NW unit and the SE unit, with an internal doorway between them; two doors and two windows were proposed on the rear elevation wall; and a dormer was proposed to the south-west roof slope of the rear extension. Those plans also show two internal doorways between the restaurant and the rear extension, as previously approved. The 2022 PP acts as a separate standalone planning permission for the rear extension, and it is not a planning permission solely for external alterations to the rear extension.

6. Another set of floor plans have been provided by the appellant, which are titled 'Existing Floorplans created in May 2022' and 'Floor Plans as of May 2022'<sup>3</sup> (the May 2022 plans). These show the ground floor of the NW unit and the SE unit with internal depths annotated as approximately 8.27m, internal doorways between the NW unit and the SE unit at ground and first floor levels, and no internal doors connecting the NW unit or the SE unit to the front part of the building. To clarify, the May 2022 plans show a solid dividing wall (with no doorways) between the restaurant and the rear of the site, which is set back within the pre-existing front part of the building.

## Reasons

7. It is the appellant's case that Parkside II Group Limited entered into a lease for the relevant part of the site on 21 January 2022, after the rear extension had been completed in accordance with the 2021 PP, and that the restaurant opened for trading in March 2022, before internal alterations were carried out in April/May 2022. On that basis, the appellant argues that internal alterations carried out after the development approved by the 2021 PP had been completed did not comprise development requiring planning permission.
8. It is the Council's case that it has not been shown, on the balance of probabilities, that the rear extension was completed in accordance with the 2021 PP, and that the development shown in the May 2022 plans was constructed from the outset.
9. There is no dispute that the erection of the rear extension comprised development requiring planning permission. With regard to section 55(2)(a) of the Act, if the rear extension was completed in accordance with either the 2021 PP or the 2022 PP, internal alterations could have been carried out later without comprising development requiring planning permission. Alternatively, if the extension was constructed to reflect the May 2022 plans as a single building operation from the outset, then the entirety of those works may be unlawful.
10. Photographs dated 12 August 2021 (the 2021 photos) and 21 March 2022 (the 2022 photos) show the rear extension under construction at those times did not accord with the plans approved by the 2021 PP. Specifically, and as a minimum, those photographs show the extension was erected with two door openings and two window openings within the rear elevation wall (rather than one door and three windows), and an internal wall with a door opening separating the rear extension into what are now the NW unit and the SE unit. The same dividing wall between the NW unit and the SE unit remains in place in photographs dated 22 June 2023 and

<sup>2</sup> P1105 Revision D and P1106 Revision D

<sup>3</sup> P2303 dated May 2022, the appellant's Appendix D

6 March 2025. As a matter of fact and degree, the 2021 photos do not show an opening in place between the restaurant and the rear extension.

11. In addition to the above, the Council claims that the ground floor of the rear extension was constructed deeper than approved by the 2021 PP. It is said that the 2021 photos support this, with reference made to differences in brickwork on the internal flank and back walls and the apparent depth of the rear internal space. I note the differences in brickwork and the apparent internal depths of what are now the NW unit and the SE unit shown in those photographs. There are no details of measured surveys before me, but on the evidence presented, it is difficult to conclude that the 2021 photos show anything other than works progressing on the internal layout shown in the May 2022 plans rather than those approved by the 2021 PP or the 2022 PP. The 2021 photos appear consistent with the May 2022 plans in terms of the internal depth of the rear part of the building, the fenestration layout on the rear elevation wall, and the dividing walls between the front and rear parts of the building and what are now the NW unit and the SE unit.
12. The other point to note from the 2021 photos is that they show the rear extension was not substantially complete at that time. They show most of the brickwork appears to have been completed and the first-floor joists were in place, yet no roof was in place, no internal stair(s) had been installed, and no windows or doors had been fitted to the rear elevation wall.
13. Nathaniel Weiss and Samuel Edward Steen are directors of Parkside II Group Limited. In addition to stating that the rear extension was constructed in accordance with the 2021 PP, their statutory declarations (SDs) explain that the rear extension was used by them as staff room facilities, storage, and offices incidental to the operation of their business, and that they altered the internal layout in April 2022 so as to increase the restaurant seating area and reduce disruption to customers.
14. The SDs of Bobby Main, Scott Breslin, Jack Hillier, Will Reed, and Lukasz Rudnicki state that they carried out various plumbing/electrical/decorating/cleaning works to the ground floor of the appeal building. Their SDs also state that they have been 'shown a copy of planning drawings relation to planning permission 2021/0008' and that they 'can confirm that these drawings are an accurate reflection of the works that were carried out prior to the opening of the restaurant known as Mimis in March 2022'.
15. The internal alterations claimed to have been carried out in April/May 2022 are described consistently in the SDs as closing/blocking up the access from the restaurant to the rear extension. The SDs of the people who carried out those works refer to them as 'done out of hours to avoid disruption to customers' and 'completed within a couple of days'. This suggests that they are describing very simple works to block up the two internal doorways between the restaurant and the rear extension shown on the plans approved by the 2021 PP and the 2022 PP. However, other than the SDs, there is no evidence to show it is likely those doorways ever existed. Moreover, the appellant's presentation of the May 2022 plans suggests that layout was in place in May 2022, which is very difficult to reconcile with the content of the SDs. Alongside this, the plans the SDs refer to are not attached to those signed documents or identified with reference to their plan numbers, and the overall lack of detail in the SDs means the extent of the internal works claimed to have been carried out in April/May 2022 remains unclear.

16. Although SDs carry substantial weight on account of the legal implications where false statements are made, the SDs in this case lack detail and are ambiguous. They all suggest the development approved by the 2021 PP was completed in accordance with that planning permission, when photographic evidence shows undoubtedly otherwise.
17. Google images showing the interior of the restaurant dated April 2022 reflect the layout of the restaurant shown in the May 2022 plans. The appellant doubts the veracity of the date provided for the Google images because they were taken by a third party. The Google date conflicts with the dates and descriptions of the works referred to by the SDs, but it is consistent with the May 2022 plans.
18. A copy of the lease agreement entered into between the appellant and Parkside II Group Limited dated 21 January 2022 has been provided, which identifies the property referred to in that lease as the ground floor of the appeal site shown edged in red on a plan attached to that lease. The plan included in the scanned document provided shows the ground floor plan approved by the 2021 PP. For the reasons explained above, the other evidence shows it is extremely unlikely that ground floor layout ever existed within a substantially complete rear extension.
19. No concerns were raised with the development during or following the Council's inspections in 2021 and 2022, but that does not convince me it is likely the development was being carried out in accordance with any planning permission at those times. I am also not concerned by different opinions said to have been previously expressed by Council Officers relating to the lawfulness of any works, not least because those claims have not been substantiated.
20. As a minimum, on account of the continued presence of the dividing wall between the NW unit and the SE unit and the fenestration arrangement in the rear elevation wall from 12 August 2021 (prior to the extension being substantially complete) to at least 6 March 2025 (after the rear extension was substantially complete), it is clear that the development was not carried out in accordance with the plans approved by the 2021 PP. Moreover, the appellant's limited evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the development approved by the 2022 PP was completed in accordance with that planning permission prior to any internal alterations being carried out. It follows that it has also not been shown, as a matter of fact and degree, that the internal alterations claimed to have been carried out after the completion of the rear extension were lawful on the date of the application for an LDC.

## **Conclusion**

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development as sought for 'Confirmation that the single-storey rear extension (2021/0008) was completed prior to the alterations to the internal layout' was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

*L Douglas*

INSPECTOR