Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0375

DESCRIPTION:

Application to confirm the garage has been converted into living space for purposes ancillary to the main dwelling within the last 4 years (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

HR/46/84	Residential, public open space, playing fields & community use and improvements to reeds lane Comment: Outline (From old Planning History)	Application Permitted on 17.02.1986
SQ/128/01	Conservatory Site: Redwood House 63 Cedar Drive Southwater	Application Permitted on 30.11.2001
DC/22/1093	Erection of a first-floor rear extension to dwelling, and a single-storey rear extension to detached garage building.	Withdrawn Application on 15.07.2022
DC/22/1480	Erection of a first floor rear extension.	Application Permitted on 28.09.2022

ASSESSMENT

The application relates to Application to confirm the garage has been converted into living space (Class C3) within the last 10 years (Lawful Development Certificate - Existing).

Relevant Legislation and Guidance

Section 191(2) of the Town and Country Planning Act 1990 (TCPA) provides that *'for the purposes of this Act uses and operations are lawful at any time if-*

a.) no enforcement action may 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.'

The land and matters subject of this application are not subject of an extant enforcement notice, as such, there would be no automatic exemption from the grant of a certificate of lawfulness by virtue of the provisions of S.191(2)(b) TCPA 1990.

S.171B of the TCPA states:

'(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no

enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).]

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

S.191(4) of the TCPA states:

> *"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."*

Paragraph 006 of the relevant planning practice guidance (PPG) explains that the applicant is responsible for providing sufficient information to support an application. This paragraph, furthermore, explains that, in the case of applications for an existing use, if the authority holds no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on a balance of probability.

Case law, furthermore, confirms that in the determination of an application for a certificate of lawfulness, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the authority holds no evidence itself, or from others, to contradict or call into question the probability of the applicant's version of events there is no good reason to refuse an application.

The Test

TCPA 1990 s191(1) provides that if any person wishes to ascertain whether:

- *Any existing use of buildings or other land is lawful;*
- *Any operations which have been carried out in, over or under land are lawful; or*
- *Any other matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful;*

he may apply to the local planning authority specifying the land and describing the use, operations or other matter.

If on such an application, the local planning authority is satisfied with the lawfulness of the use, operations, or other matters described in the application, or that description as modified or substituted by them, it shall issue a certificate or refuse the application.

The Act provides that in respect of a failure to comply with any condition or limitation subject to which planning permission has been granted, any matter constituting such a failure is lawful at any time if:

(a) The time for taking enforcement action in respect of the failure has expired; and

(b) It does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Applicant Evidence

- Location, Block, Existing and Proposed Floor and Elevations: PL1
- Design and Access Statement

Council's Evidence

- Application DC/22/1480
- Application DC/22/1093
- Application PE/14/0807
- Consultation Response: Horsham District Council - Compliance
- Consultation Response: Horsham District Council - Democratic Services
- Consultation Response: Horsham District Council – Revenues
- Consultation Response: Southwater Parish Council (Objection)
- 6x Lawful Development Questionnaires
- Google Street View (2009; 2011; 2019)
- Council Aerial Photography (2001; 2007; 2012; 2018)

Planning History

Redwood House, 63 Cedar Drive is a detached dwelling in the built-up area of Southwater, sited on the corner of Cedar Drive and Camelot Close. There is a short planning history of the site with DC/22/1093 (Erection of a first-floor rear extension to dwelling, and a single-storey rear extension to detached garage building) and DC/22/1480 (Erection of a first floor rear extension) being the most pertinent.

DC/22/1093 was advised by the case officer to be withdrawn and was so on 15/07/2022 over concerns the additional garage extension would take up too much in the garden. The site visit photographs related to this application show the garage extension to the rear and the replaced door to the front in situ. DC/22/1480 was later submitted which omitted the garage from the application. This was approved 28/09/2022.

Discussion

The application is to confirm that the garage has been converted into ancillary living space, with an extension to the rear and external alterations, within the last 4 years (Lawful Development Certificate - Existing). .

<u>Building Operations to convert/extend the Building</u>

No specific details have been provided within the application to outline the date in which the works to the garage building were undertaken. However, the Council have evidence in the form of representations from nearby residential properties and aerial photography to inform the assessment.

The representations provided within the Lawful Development Questionnaire indicate that the works to convert and extend the garage took place in 2018. The Council's Mapping System evidences an extension to the rear of the garage in place in 2018, with Google Earth images indicating that the extension to the garage was undertaken sometime between September 2015 and August 2018.

On the basis of the available evidence, it is considered on the balance of probability that the extension to the rear of the garage has been in situ since 2018, for a period in excess of 4 years from the date of the application.

<u>Use of the Building</u>

The building forms an original incidental building constructed alongside the main dwelling. There are no conditions on the original planning permission (reference HR/46/84) that restricted the use of the garage for the parking of vehicles only.

The application is supported by Floor and Elevation Plans which show that the garage has been converted internally to provide a bedroom and w.c (with shower). The supporting annotation states that this is occupied as ancillary to the main dwelling, and no kitchen or living facilities are shown on the plans. The building does not therefore benefit from all of the facilities required for day to day living and still shares a functional relationship with the main dwelling. On this basis, the building is considered to be ancillary to the main dwelling, where no material change of use has occurred.

Conclusion

It has been demonstrated on the balance of probability that the operational development comprising a rear extension to the garage and external alterations to the front door was undertaken in excess of 4 years from the date of the application. In addition, the converted garage maintains a functional relationship with the main dwelling, and is considered to represent ancillary accommodation where no material change of use has taken place. The Certificate of Lawful Development Existing can therefore be approved on this basis.

Recommendation: Application Permitted

1 It has been demonstrated on the balance of probability that the operational development, comprising a rear extension and external alterations to the building (as shown shaded red on the attached plan), has been substantially completed for a period in excess of 4 years from the date of the application.

2 It has been demonstrated on the balance of probability that the building (as shown shaded red on the attached plan) comprises habitable accommodation occupied as ancillary to the main dwelling of Redwood House, 63 Cedar Drive, Southwater.

DELEGATED

Case Officer sign/initial J.Burrowes Date: 23.05.2024

Authorising Officer sign/initial T Dale Date: 23.05.2024

Plan

