



Delegated Report

Lawful Development Certificate (Existing)

Application no:	20220322
Location	Destiny, Willow Walk, Meopham, Gravesend, Kent, DA13 0QS
Proposal:	Application for Lawful Development Certificate in respect of the continued use of a single storey rear extension and rooms in the roof space.
Applicant:	Messrs J And R Brennan
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form - dated 21/03/2022;
Planning Statement - dated 03/2022;
Drawing no. 001 - Rev. A - Site Location Plan and Existing Block Plan;
Drawing no. 002 - Rev. A - Existing Floor Plans;
Drawing no. 003 - Rev. A - Existing Elevations.

Proposal

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the existing use of the single storey rear extension and rooms in the roof space.

Relevant Planning History

Reference	Description	Decision	Decision Date
20010448	Erection of single storey rear extension to form en-suite w.c./shower room and lounge.	REFUSED	31.07.2001
19930351	Erection of detached double garage at the front.	PERMITTED	23.08.1993
19900852	Erection of detached bungalow.	PERMITTED	23.01.1991

Planning History Note

A comparison of the original planning permission for the erection of a bungalow (ref. 19900852) and the submitted plans demonstrate that the bungalow was not constructed in accordance with the approved plans. This issue was highlighted in the delegated report for refused development (ref. 20010448), and although likely to be lawful through the passage of time, would be considered additional development within the Green Belt in any future application.

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of lawfulness of existing use or development.

Procedure for determination

This application seeks a determination by the LPA as to whether the existing use of the single storey rear extension and rooms within the roof space is a lawful use as it has been used for such a purpose for more than 4 years as set out under s.171B (1) of the Town and Country Planning Act 1990.

However it is clear from the 19900852 permission for the bungalow (albeit the property was not built entirely as approved) included the following conditions;

writing by, the District Planning Authority.

(iii) Notwithstanding the provisions of Article 3 of and Part 1 of Schedule 2 to the Town and Country Planning General Development Order 1988 (as amended) or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, no enlargements, improvements or other alterations to the bungalow hereby permitted shall be carried out without the prior permission, in writing, of the District Planning Authority.

(vii) Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (as amended) or any provision equivalent to that Order in any statutory instrument revoking and re-enacting that Order, the loft area shall not at any time be used as a habitable room.

The extensions represent a breach of planning condition and as such 10 years needs to be provided as set out in s.171B (3) of the Town and Country Planning Act 1990. This was raised with the Agent who agreed to this, and has already provided sufficient information with the application to prove 10 years.

National Planning Guidance on determining applications of Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use of development is lawful beyond any reasonable doubt. Furthermore, in the case of an application for exiting uses, if a local planning authority has no evidence itself, nor any from 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 applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

To confirm the lawful status of the extended property, the LPA need to be satisfied that the building has been constructed and used over the requisite ten year period.

Analysis

This application is for a LDC and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the local planning authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

Destiny is a detached bungalow located on the western side of Willow Walk. It is the last dwelling at the southern end of the street. The property was granted permission in 1990 (ref. 19900852) and has had permission granted for a large detached garage to the front of the dwelling in 1993 (ref. 19930351).

The Planning Statement, supporting this application, states that the extension was constructed and that the roof space had been used to accommodate habitable rooms as early as 2003. Aerial satellite evidence has been provided to support these claims with imagery from 2003-2020, which has been verified by the Local Planning Authorities own assessment.

Conclusion

On the balance of probabilities and in the absence of any evidence to the contrary, it is considered that the extension and roof space for habitable rooms is lawful by reason of Section 171B (3) of the Town and Country Planning Act 1990, as amended.

The use is therefore lawful by reason of Section 191(3) (a) of the Act and Certificate of Existing Use is duly issued.

Recommendation: Grant Lawful Development Certificate			
Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	31 st May 2022	Dated:	01 June 2022