

Recommendation: REFUSE A CERTIFICATE OF LAWFUL USE

3 Proposal

- 3.1 The proposal is for a Section 192 application for a Lawful Development Certificate to establish whether the proposed conversion of the integral garage for habitable accommodation is considered to be classed as permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 3.2 The application is supported by plans of the existing and proposed site layout and elevations, including the provision of an additional parking space at the front of the property. The garage door would be replaced with a window, door and brickwork, and the proposed materials would match those of the existing dwelling.

4 Legislation

- 4.1 The Town and Country Planning (General Permitted Development) (England) Order 2015.

5 Statutory and Non Statutory Consultations

None.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

- 7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Whether the proposed works fall within the definition of 'permitted development' set out in the current General Permitted Development Order; and
- (ii) If so, whether those rights have been restricted by any previous conditions or constraints affecting the site

(i) Whether the proposed works fall within the definition of 'permitted development' set out in the current General Permitted Development _____ Order

- 7.2 The proposal has been assessed against the 'permitted development' allowances in the Town and Country Planning (General Permitted Development) (England) Order

2015.

7.3 The development has been assessed against Part 1 Class A - the enlargement, improvement or other alteration of a dwellinghouse.

7.4 Under Class A the proposed conversion of the integral garage for habitable accommodation meets the following tests:

(a) Permission to use the dwellinghouse as a dwellinghouse has not been granted only by virtue of Class M, N, P or Q of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (changes of use)

(b) Not applicable

(c) Not applicable

(d) Not applicable

(e) The proposed new door and window would be flush to the front elevation of the existing garage.

(f) Not applicable

(g) Not applicable

(h) Not applicable

(i) Not applicable

(j) Not applicable

(k) Not applicable

7.5 A2 - The application site is not situated within Article 2(3) land.

7.6 A3 - The plans and details submitted demonstrate that the conditions in A3 would be met.

7.7 A search of the planning history has not revealed any conditions that restrict 'permitted development' rights, nor is the dwelling part of an Article 4 direction. (Considered in detail below)

7.8 There is sufficient evidence as detailed in the submitted documentation to prove that the conversion of the integral garage for habitable accommodation meets the requirements of Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, and can in principle be considered as permitted development provided that there are no restrictive conditions or other limitations in force removing such rights.

(ii) Whether permitted development rights have been restricted by any previous conditions or restrictions affecting the site

7.9 As described in Section 2 above, the property at 8 Malvern Mews was constructed pursuant to Planning Permission 91/50511/3 dated 21 June 1991. This permission was subject to the following conditions which are relevant to this application:

7) Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 as amended or by any replacement or re-enactment thereof, no building or structure permitted by Classes A-G of Part 1 and Class A of Part 2 of the Second Schedule of the Order shall be erected without the prior written consent of the Local Planning Authority.

Reason: to secure well-planned development.

11) The development hereby permitted shall not be brought into use until the areas shown on the approved plan for the parking, loading and unloading of vehicles shall have been made available, surfaced and marked out, and the area shall be retained in a condition to the satisfaction of the Local Planning Authority and reserved for that purpose at all times.

Reason: In the interests of highway safety

- 7.10 It must therefore be concluded that Condition 11 of Planning Permission 91/50511/3 requires the retention of the parking areas shown on the approved plan and reserved for this purpose at all times. As no such permission has been granted, the conversion of the integral garage for habitable accommodation proposed for 8 Malvern Mews under this application for a certificate of lawfulness would be in contravention of that condition, and consequently would not be lawful.

8 Conclusion

- 8.1 To conclude, whilst the proposal to convert the integral garage for habitable accommodation in this application would meet with current permitted development allowances, the effect of Condition 11 of Planning Permission 91/50511/3, which gave consent for the original dwellinghouse at 8 Malvern Mews, is such as to withdraw those permitted development rights. In the absence of a valid planning permission for the development shown on the submitted plans, such development would not be lawful. This application for a certificate of lawfulness is therefore recommended for refusal.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/17/00579 for the following reasons

Wording for Decision Notice

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 29 May 2017 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged red on submitted Location Plan PG NO:06 would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

- 1 Whilst the proposal to convert the integral garage into habitable accommodation in this application would meet with current permitted development allowances, the effect of Condition 11 of Planning Permission 91/50511/3 dated 21 June 1991, which gave consent for the original dwellinghouse at 8 Malvern Mews, is such as to withdraw those permitted development rights insofar as retaining the parking spaces as set out on the approved plan. In the absence of a valid planning permission for the development shown on the submitted plans, such

development would not be lawful.

FIRST SCHEDULE:

This decision relates to the following development:

The conversion of the integral garage for habitable accommodation as described in the written particulars, plans and other documents submitted with your application received on 29 May 2017.

SECOND SCHEDULE:

This decision relates to land at 8 Malvern Mews, Emsworth PO10 7SR as shown edged red on the submitted Location Plan PG NO: 06.