
Site Address:	1 The Gardens, Havant, PO9 2XH		
Proposal:	Application for Lawful Development Certificate relating to proposed side extension.		
Application No:	APP/14/00259	Expiry Date:	13/05/2014
Applicant:	Mr & Mrs Bushnell	Team:	Team 1
Agent:	Mr Rosenthal	Case Officer:	Steve Weaver
Ward:	St Faiths		

Recommendation: **REFUSE A CERTIFICATE OF LAWFUL DEVELOPMENT**

1 Site Description

- 1.1 The application site comprises a detached two-storey dwelling with linked double garage of conventional brick and tile construction, located at the northern end of a small cul-de-sac. It lies within the built up area close to the eastern limit of Havant and the junction of Emsworth Road with the A27(T).
- 1.2 The dwelling is aligned east-west, with a rear garden adjoining the residential properties of Tavistock Gardens to the west. To the north lies Coach House, a modest cottage of brick and flint construction which pre-dates the more modern houses that make up The Gardens cul-de-sac.

2 Planning History

30510

Three houses and garages, one bungalow and garage, new driveway. Permitted 3/1/85.

This permission was subject to a number of conditions, one of which reads:

4. Notwithstanding the provisions of the Town and Country Planning General Development Order 1977, no building or structure permitted by Class I1 of the First Schedule of the Order as amended or by any replacement or re-enactment thereof shall be erected on Plots 1, 2 or 3 without the prior written consent of the Local Planning Authority.

Reason: To safeguard the appearance of the area and to preserve the amenities of adjoining properties.

(The application site is understood to comprise Plot 1 of this permission).

3 Proposal

- 3.1 This application is a Section 192 application for a Lawful Development Certificate to establish whether the proposed demolition of an existing conservatory and the construction of a single storey side extension incorporating roof lights is considered to be classed as permitted development under the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008, which is an amendment to the Town and Country Planning (General Permitted Development) Order 1995.
- 3.2 The application is supported by detailed plans of the existing and proposed site layout and elevations.

4 Policy Considerations

- 4.1 The relevant legislation to consider in this case is the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order brought into effect on 1 October 2008, which is an amendment to the Town and Country Planning (General Permitted Development) Order 1995.
- 4.2 The recently published Planning Practice Guidance (March 2014) confirms that the responsibility to provide evidence to back up an application for a certificate of lawfulness rests with the applicant.

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: 4

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 legislation 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 restrictions 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) Order 1995 (as amended). Of most relevance is the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order of October 2008 and Technical Guidance on Permitted Development for Householders released by the Department of Communities and Local Government in August 2010.
- 7.3 The development has been assessed against Part 1 Class A of the Amendment No.2 (England) Order, which sets out the permitted development rights available in respect of proposals to enlarge, improve or otherwise alter a dwellinghouse. Under Class A, and based on the plans supplied with the application, the extension to the side of the

property can be regarded as meeting the following criteria:

A1:

- (a) Would cover less than 50% of the curtilage of the dwellinghouse
- (b) Height would not exceed height of the highest part of the existing dwellinghouse
- (c) Existing eaves height would not be exceeded
- (d) Extension would not front a highway
- (e) Extension single storey and would not project to the rear
- (f) Would not have more than one storey
- (g) Proposal is within 2m of a boundary but eaves height does not exceed 3m
- (h) Proposal extends to side of dwellinghouse but is not more than 4m in height; does not have more than one storey; and has a width less than half the width of the original dwellinghouse
- (i) Would not include listed items

A2:

The development would not be on Article 1(5) land

A3:

The conditions in A3 would be met (materials confirmed by note on submitted plans)

It is therefore considered that the side extension as proposed would meet the requirements of Class A of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 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

- 7.4 As described in Section 2 above, the property at 1 The Gardens was constructed pursuant to Planning Permission 30510 dated 3 January 1985. This permission was subject to a number of conditions, one of which reads:

4. Notwithstanding the provisions of the Town and Country Planning General Development Order 1977, no building or structure permitted by Class I1 of the First Schedule of the Order as amended or by any replacement or re-enactment thereof shall be erected on Plots 1, 2 or 3 without the prior written consent of the Local Planning Authority.

Reason: To safeguard the appearance of the area and to preserve the amenities of adjoining properties.

(The application site is understood to comprise Plot 1 of this permission).

- 7.5 Research of the scope of development authorised by Class I1 of the First Schedule of the Town and Country Planning General Development Order 1977 reveals that it dealt with the following:

Class I - Development within the curtilage of a dwellinghouse

1. The enlargement improvement or other alteration of a dwellinghouse.....

It must be therefore concluded that Condition 4 of Planning Permission 30510 expressly prevents the construction of extensions to the dwellinghouses on Plots 1, 2 and 3 of that approval without the benefit of planning permission. As no such permission has been granted, the construction of the extension proposed for 1 The Gardens (Plot 1) 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 size, location and design of the side extension proposed in this application would meet with current permitted development allowances, the effect of Condition 4 of Planning Permission 30510, which gave consent for the original dwellinghouse at 1 The Gardens, 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.
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9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/14/00259 for the following reasons

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 10 March 2014 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:07 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 size, location and design of the side extension proposed in this application would meet with current permitted development allowances, the effect of Condition 4 of Planning Permission 30510 dated 3 January 1985, which gave consent for the original dwellinghouse at 1 The Gardens, 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.

FIRST SCHEDULE:

This decision relates to the following development:

Removal of existing conservatory and construction of a single storey side extension as described in the written particulars, plans and other documents submitted with your application received on 10 March 2014.

SECOND SCHEDULE:

This decision relates to land at 1 The Gardens, Havant, PO9 2XH as shown edged red on submitted Location Plan PG NO:07.