

Application for a proposed certificate of lawful development – 43 Queen Berthas Avenue CD/TH/21/1052

Planning Committee – 20th October 2021

Report Author **Marie Brook-Smith, Planning Assistant**

Planning Reference: CD/TH/21/1052

Site Address: 43 Queen Berthas Avenue, Birchington

Applicant: Keen

Status **For Decision**

Classification: Unrestricted

Ward: **Birchington South**

Executive Summary:

This report concerns an application for a proposed certificate of lawful development.

The application is reported to members as the applicant is an elected ward councillor.

The proposed development involves the erection of a single storey rear extension. The purpose of this type of application is to establish if any proposed development would be lawful in this instance if it complies with permitted development as set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended).

Recommendation:

Members approve the application for a proposed certificate of lawful development under reference CD/TH/21/1052 as the proposed works fall within Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and are permitted development as a result.

CORPORATE IMPLICATIONS

Financial and Value for Money	No implications.
Legal	The Planning Committee is not bound to follow the advice of Officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision.

	<p>The reasons for any decision must be formally recorded in the minutes and a copy placed on file.</p> <p>If Members decide not to accept the advice of Officers it should be mindful of the potential for legal challenge and associated cost implications.</p>
Corporate	No implications
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <p>In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.</p>

1.0 Background

- 1.1 The site is located within a row of detached bungalows, with the railway and golf course located to the rear of the site to the north. The site does not fall within the Conservation Area, and the property is not listed.
- 1.2 The application for a proposed certificate of lawful development is reported to the Planning Committee as the applicant is an elected member of the council.

2.0 Outline of Process

- 2.1 Applications for proposed certificates of lawful development were introduced in 1991 as part of the Planning and Compensation Act 1991. The purpose of this type of application is to establish if any proposed use of buildings or other land or any operations proposed to be carried out in, on, over or under land, would be lawful. A use or operation can be lawful if it does not constitute development, or it complies with the permitted developments set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended).
- 2.2 The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law of judicial authority. The responsibility is on the applicant to provide evidence to support the application.
- 2.3 The decision for the Council is whether the proposed development complies with all parts of the The Town and Country Planning (General Permitted Development)

(England) Order 2015 (As amended). If the proposed development is not considered to be lawful then a planning application would need to be submitted for the proposed works.

- 2.4 As the application is not an application for planning permission, there is no requirement for public consultation under the lawful development certificate procedure.

3.0 Analysis

- 3.1 The applicant has submitted elevations and floor plans showing the proposed development.

- 3.2 The proposed certificate of lawful development is for the erection of a single storey rear extension measuring 2.5m deep, 6.7m wide and 3.7m high.

- 3.3 The property in question appears to have been used as a single dwelling house, there being no planning history or other reason to believe that the site has been used for other uses. It is a detached property and permitted development rights have not been removed. It is necessary to consider whether the proposed works fall within Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and are permitted as a result.

- 3.4 The property in question is not located within a Conservation Area, nor is the property a Listed Building.

- 3.5 Class A relates to development within the curtilage of a dwellinghouse for an enlargement, improvement or other alteration of a dwellinghouse.

- 3.6 The proposal would not result in more than 50% of the curtilage of the original dwellinghouse being covered by buildings in accordance with Class A1 (b).

- 3.7 The height of the extensions would not exceed the highest part of the dwellinghouse, nor would the eaves height exceed the height of eaves of the existing dwellinghouse. The enlarged part of the dwellinghouse would not extend beyond (i) a wall which forms the principal elevation of the original dwellinghouse, or (ii) fronts a highway and forms a side elevation of the property. The enlarged part of the dwellinghouse would have a single storey but (i) would not extend beyond the rear wall of the original dwellinghouse by more than 4m and would not exceed 4 metres in height. The proposed single storey rear extension measures 2.5m deep, 6.7m wide and 3.7m high (2.9m to the eaves) and does not extend beyond the existing side elevations, therefore complying with paragraph A1 (c), (d), (e), (f), (i) and (j).

- 3.8 The submitted plans state that the materials used would match those used in the construction of the exterior of the existing dwellinghouse, therefore condition A.3, requiring materials used in any exterior work (other than materials used in the

construction of a conservatory) to be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, is met.

3.9 The extensions are therefore permitted under Class A of schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

4.0 Conclusion

4.1 Therefore it is the officer's view that a Certificate of Lawful development is issued on the following ground:

The proposal constitutes permitted development as defined by Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

5.0 Options

5.1 Members approve the application for a proposed certificate of lawful development under reference CD/TH/21/1052 as the proposed works fall within Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and are permitted development as a result.

5.2 Members propose an alternative motion.

6.0 Recommendations

6.1 Officers recommend that members of the Planning Committee agree option 5.1 for the reasons set out in this report.

Contact Officer:	Marie Brook-Smith, Planning Assistant
Reporting to:	Emma Fibbens, Principal Planning Officer

Background Papers

Annex 1	Town and Country Planning (General Permitted Development) (England) Order 2015 http://www.legislation.gov.uk/ukxi/2015/596/pdfs/ukxi_20150596_en.pdf
Annex 2	Planning Practice Guidance https://www.gov.uk/guidance/lawful-development-certificates