

Officer Report

Application No.	24/0147/FH
Site Address	9 Stanbury Crescent, Folkestone, CT19 6PB
Officer Name	Macey Douglas
Proposal	Lawful Development Certificate (proposed) for existing conservatory and a change of use of rear conservatory to kitchen.

Recommendation

Report Number	RD-433841
Recommended Decision	Recommended to be Lawful
Recommendation Date	15 March 2024

Report

Site

The application site is a detached bungalow situated to the western side of Stanbury crescent within the settlement boundary of Folkestone. The host dwelling is finished in facing brickwork with white uPVC fenestrations used throughout.

To the rear of the property there is an existing conservatory/brick-built extension which is subject of the current application.

Site History

No recent or relevant site history

Proposal

The proposal seeks a certificate of lawful development for the erection of a conservatory to the rear of the dwelling. The applicant is applying on the basis of the building works being completed more than four years before the date of application and is therefore lawful under the 'four year rule'.

The applicant has submitted the following as evidence to support this application:

KSI Calculations - September 2018

Domestic Electrical Installation Certificate - December 2018

Windows Invoice - November 2018

The certificate is also sought for the change of use of the conservatory to a kitchen. The works are internal and no external changes have been proposed.

Consultation Responses

Not required under the LDC process.

Publicity

Not required under the LDC process.

Representations

Not required under the LDC process.

The Law

The NPPG 'Lawful Development Certificate' state that "local planning authorities can grant a certificate confirming that:

(a). an existing use of land, or some operational development, or some activity being carried out in breach of planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990..."

The law relating to immunity of existing development from enforcement action necessitates specified time periods that need to have elapsed for different circumstances. These time periods are specified under section 171B of the Town and Country Planning Act 1990.

Section 171B (1) states 'where there has been a breach of planning control consisting of 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'.

Appraisal

Existing Conservatory

Accompanying the application which seeks confirmation that the existing conservatory is lawful, a window invoice from 2018 and electrical installation certificate from December 2018 has been provided demonstrating that the conservatory has been in situ since then.

The Applicant has also submitted KSI structural calculations which from September 2018 which provide evidence that the conservatory to the rear of the site has been in situ for four years.

Additionally, aerial photography available to the council from 2019 has been assessed which shows the conservatory in situ.

On the balance of probability and in accordance with the NPPG, it is considered the rear conservatory was completed more than 4 years ago and is therefore immune from enforcement.

Change of use of the existing conservatory to kitchen

The proposed works also seek to relocate the kitchen into the conservatory. It has been confirmed that no alteration or extension to the existing conservatory is proposed or would be required in order to accommodate this change and an assessment as to the lawful nature of the works has been made on this basis.

Section 55 of the Town and Country Planning Act 1990 sets out the meaning of development and new development. Development as defined by Part 55 is the carrying out of building, demolition, rebuilding and structural alterations or additions to buildings. Point 2 of Part 55 sets out operations that would not be classed as development as follows:

"The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

(a) The carrying out for the maintenance, improvement or other alteration of any building works which –

(i) Affect only the interior of the building, or

(ii) Do not materially affect the external appearance of the building,”

The proposed works, as stated, would seek to alter the internal arrangement of the host dwelling only, and includes the moving the kitchen into the existing conservatory. As it has been confirmed that no alteration or adaptation to the existing conservatory is required to accommodate this change, the proposal would fall within Part 55, 2(i) of the Town and Country Planning Act 1990 where, given the proposal affects the interior of the building, the works would not constitute development.

The applicant will be reminded of the need to ensure that the works are also subject to the necessary Building Regulations approvals before works commence.

Human Rights

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Public Sector Equality Duty

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

Duty to Cooperate

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service and, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

Cooperation has occurred between the applicant and the LPA to confirm that no works have been proposed to the exterior of the conservatory.

Recommendation

On the balance of probability and in accordance with the NPPG, it is considered the rear conservatory was completed more than 4 years ago and is therefore considered to be lawful. Further to this, the proposed internal works would not constitute development as defined under Section 55 of The Town and Country Planning Act 1990 and a certificate can be issued.

Suggested Informatives (3)

1

The application has demonstrated that the conservatory has been in situ for a period exceeding 4 years and is therefore Lawful under section 191 of the Town and Country Planning Act (1990) (as amended). In addition to this the relocation of the kitchen into the conservatory is not considered to constitute development under Section 55 of the Town and Country Planning Act 1990 (as amended), therefore the application is lawful.

2

This application has been determined on the basis of the following documents:

Location Plan (received 31/01/2024)

Window Invoice (received 31/01/2024)

KSI Calculations (received 31/01/2024)

Domestic Electrical Installation Certificate (received 31/01/2024)

Application Form (received 31/01/2024)

3

You are advised that Building Control should be contacted with regard to the Building Regulation requirements associated with the proposal before commencement of the works.