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## Appeal Decision

by **Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 December 2014

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**Appeal Ref: APP/V2255/X/14/2217698**

**3 Granville Close, Faversham, Kent, ME13 7RY**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mark Hutchinson against the decision of Swale Borough Council.
  - The application Ref SW/14/0040, dated 6 February 2014, was refused by notice dated 3 April 2014.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is construction of a dwarf wall/installing window and insulation.
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### Procedural Matters

1. A site visit was not necessary to determine the appeal and none was made.
2. The proposal is for the construction of a dwarf wall/installing a window and insulation to allow the use to change from a garage to a bedroom.
3. In this case the appellant has provided some argument as to why he needs the proposed use of the garage, noting his growing family and the fact that this would not lead to congestion on the nearby roads, there being sufficient off-road drive space to park vehicles. It is also suggested that there is a precedent set by other properties with converted garages. These arguments would be appropriate if the appellant were to make a planning application for the development outlined. An application for a certificate of lawful use does not involve consideration of the planning merits of the situation, just whether what is proposed would be lawful.

### Decision

4. The appeal is dismissed.

### Reasons

5. When the properties were developed, planning permission NK/2/61/70 had conditions attached. Condition 3 noted *"the layout (or details) submitted in pursuance of condition 1 above shall show adequate land to the satisfaction of the local planning authority reserved for the parking or garaging of one car per dwelling unit and upon approval of the layout no further development whether permitted by the Town and Country Planning General Development Orders 1950 to 1960 or not shall be carried out on the land so shown (other than the*

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*erection of a private garage or garages) or in such a position as to preclude vehicular access to this reserved parking space”.*

6. In a lawful development certificate it is for the applicant to prove his case on the balance of probability. There is no argument made that the garage as identified by the council was not the reserved parking space for the property for the purposes of the original planning permission. As the development would block the garage with a wall, window and insulation that would preclude vehicular access to the garage, the proposal would clearly breach condition 3 of the planning permission and would not be lawful. I note that the garage is currently used as a store, not for vehicles, but that does not mean that the proposed development would not prevent vehicular access, which he or another owner might want to make use of in the future.
7. For the reasons given above I conclude that the council’s refusal to grant a certificate of lawful use or development in respect of construction of a dwarf wall/installing window and insulation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Graham Dudley*

**Inspector**