

Appeal Decision

Site visit made on 12 October 2016

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 14 November 2016

Appeal Ref: APP/B1930/X/16/3146323

2 Moorland Road, Harpenden, Hertfordshire AL5 4LA

- 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 Mr & Mrs M Chasler against the decision of St Albans City & District Council.
 - The application Ref: 5/15/3571, dated 14 December 2015, was refused by notice dated 9 February 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a single storey rear extension and loft conversion with rear facing dormer.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my site visit building works were underway at the appeal site. I understand that planning permission was granted, on 11 May 2016, for a single storey rear extension and loft conversion with rear dormer window with two front rooflights ((reference 5/16/0825). The appellants were invited by written correspondence to consider whether or not they wished to withdraw the current appeal in the light of the grant of planning permission. No response was received.
3. Drg No 10835-01 records in the title block that the plans are at a scale of 1:50 or 1:100. However, the elevations on the A3 plan provided appear to be at a scale of 1:200.

Main Issue

4. In relation to the proposed rooflights the Council accepts that they would comply with Class C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). As such, the main issue in this case is whether the single storey rear extension and rear facing dormer complies with the conditions and limitations of Class A and B of Part 1 of Schedule 2 to the (GPDO).
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Reasons

5. In any application for a LDC the onus is on the applicant to demonstrate that the proposed development would have been lawful on the date of the application. The relevant test of any evidence is on 'the balance of probability'.
6. The proposed development comprises a rear dormer window, rooflights, and a single storey rear extension. The proposed rear extension would extend up to, and join onto, the proposed rear dormer window. The rear elevation clearly shows no separation between the dormer structure and the rear vertical wall of the single storey extension.
7. Class A of Part 1 of Schedule 2 of the GPDO grants deemed planning permission for the enlargement, improvement or other alteration of a dwellinghouse. Class B grants deemed planning permission for additions etc to the roof of a dwellinghouse. The government has produced a document entitled '*Permitted development rights for householders Technical Guidance*' (April 2016) (Technical Guidance) which provides an explanation of the rules of permitted development for householders.
8. The Technical Guidance advises that when considering whether a development proposal is permitted development, all of the relevant Parts of the rules and all the Classes within those Parts need to be taken into account. In order for a proposal to be permitted development, it must meet all the limitations and conditions under each Class relevant to the proposal. It goes on to advise that it is essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission.
9. The Council consider that the proposed single storey rear extension and dormer window would comply with all but the limitations A.1 (d), (f)(ii)¹, B1 (d) and B2 (bi) and (bii) Part 1 of Schedule 2 of the GPDO. I will consider each of these limitations in turn.

Limitation A.1. (d)

10. Limitation A.1 (d) states that development is not permitted if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. The Council consider that as the single storey rear extension intersects into the proposed rear dormer window, the combined dormer and single storey rear extension comprise the enlarged part of the dwellinghouse. The Council state that as the enlarged part of the dwellinghouse exceeds the eaves height of the existing dwellinghouse the proposal would fail to comply with limitation A.1. (d). The appellants consider that this is a problem with the development of bungalows which the guidelines do not address nor stipulate for. They state that the dormer does not project past the original rear wall of the bungalow and its connection with the lean to roof should not prejudice the provisions of the GPDO.

¹ Although the decision notice refers to the provisions of A1. (f) and (i) of Part 1 of Schedule 2 of the GPDO not being complied with the Officer's report refers to non-compliance with A.1 (f) (ii).

11. Eaves are defined within the Oxford Compact English Dictionary as 'the underside of a projecting roof'. The eaves of the single storey rear extension would be in line with the eaves of the original dwellinghouse. The roof of the dormer, does not, to my mind, have eaves as the roof of the dormer would not project. Whilst the roof of the single storey rear extension does extend past the eaves of the original dwellinghouse its eaves are in line with the eaves of the original dwellinghouse. As such, the proposal complies with limitation A.1. (d).

Limitation A.1. (f) (ii)

12. Limitation A.1 (f) (ii) states that development is not permitted if the enlarged part of the dwellinghouse would have a single storey and exceed 4 metres in height. The rear extension would be single storey and the dormer would enable a second storey of habitable accommodation to be created within the roof space. The second storey floor would be within the original dwellinghouse and thus would not create a second storey within the enlarged part of the dwellinghouse. The dormer would provide light and head room. Thus I consider that the enlarged part of the dwellinghouse would be single storey.
13. However, the single storey extension would continue and be part of the dormer due to the vertical wall. There would be no separation between the structures and as such it would read as a single addition. The total height of the enlarged part of the dwellinghouse would thus be greater than 4m. As such, the proposal fails to comply with limitation A.1 (f) (ii).
14. Furthermore, even if I were to consider the proposed rear extension separately from the dormer, the only dimension on the submitted plans shows the height of the extension to be 4 m max from the patio level. The patio level is at a higher level than either garden adjacent to the appeal site. The Technical Guidance states that references to height in the GPDO is the height measured from ground level. It states that ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. On the basis of that dimensioned measurement shown on the proposed side elevation plan the proposed single storey extension would have a height greater than 4m from ground level at that point, as the patio is an addition laid on top and the dimension is to the patio level.
15. However, the appellant refers to spot heights and that on the other flank elevation of the proposed extension, near to the garage, that the ground level is higher. The garage is stated to be part of the original construction on the appeal site, although there is no substantiated evidence to demonstrate this statement and it does not explain the difference in ground levels of the neighbouring gardens. Moreover, it is also not clear whether the spot heights were taken when the garage was in situ and if so whether the spot height can or should be taken to be the ground level for the purposes of assessing compliance with the GPDO conditions and limitations. It is also not clear if the spot heights for the points to the rear of the dwelling were taken from the existing patio area. In addition, due to the discrepancy of the stated scale of the elevation drawings, it is difficult to be satisfied that the plans scale correctly². I am therefore not satisfied that the evidence of the ground level, on this part of the appeal site, is clear and precise. As such, it has not been

² The drawing notes state to carefully scale off the drawing and to try to use figured dimensions only.

adequately demonstrated that, on the balance of probability, the proposed development would not exceed 4m in height.

Limitation B.1. (d)

16. Limitation B.1. (d) states that development is not permitted if the content of the resulting roof space would exceed the cubic content of the original roof space by more than—
- (i) 40 cubic metres in the case of a terrace house, or
 - (ii) 50 cubic metres in any other case.

The proposed dormer is an alteration or addition to the roof of the original dwellinghouse and would attach to the proposed single storey rear extension. The attachment would be by virtue of a vertical wall and the mono-pitch roof of the extension would project from that point over the rear extension. The proposed dormer is clearly an addition to the original roof, however the rear extension does not add to the volume of that roof due to the vertical wall which attaches to the dormer. As such the volume of the proposed rear extension roof does not add to the volume of the original roof. The volume of the proposed dormer is less than 50 cubic meters and as such the proposal complies with limitation B.1. (d).

Limitation B.2. (bi) and (bii)

17. Limitation B.2. (b) states that development must be constructed so that—
- (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—
 - (aa) the eaves of the original roof are maintained or reinstated; and
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and
 - (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside.
18. The limitation does not require the extension that a roof addition or alteration joins to be existing. The proposed dormer under Class B would join the roof of the proposed rear extension. As such I consider the proposal complies with limitation B.2. (bi) and (bii).

Conclusions

19. I have found that the proposal would not be permitted by Class A of Part 1 of Schedule 2 of the GPDO as it fails to comply with limitations A.1. (f) (ii). The proposal would not benefit from deemed planning permission under any other part of the GPDO and was not the subject of an express grant of planning permission at the date of the application for an LDC.
20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension and loft conversion with rear facing dormer 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.

Hilda Higenbottam

Inspector