
Appeal Decision

Site visit made on 14 November 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 23 November 2016

Appeal Ref : APP/Z5630/X/16/3147150

Land at 37 Van Dyck Avenue, New Malden, KT3 5NF.

- 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 lawful development certificate by the Council of the London Borough of Kingston upon Thames.
- The appeal is made by Mr Guohui Huang.
- The application reference 16/14143/LDP was dated 6 February 2016.
- The application was made under section 192 (1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is proposed erection of single storey side/rear extension.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The appeal site is two storey detached dwelling. It has been extended by the erection of a single storey rear extension and roof extension. The proposed extension the subject of this appeal is a single storey side/rear extension.
4. Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 as amended (the GPDO) sets out permitted development rights and accompanying limitations and conditions as they apply to the enlargement, improvement or alteration of a house. Class A.1 (J) (iii) provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a

wall forming a side elevation of the original dwellinghouse and would exceed 4 metres in height, have more than a single storey or have a width greater than half of the width of the original dwellinghouse.

5. The issue between the parties is whether the width is greater than half of the width of the original dwellinghouse. The Appellant argues that as the original house width is approximately 6.6m and the proposed extension is 2.2 m wide that the width tolerance is not exceeded.
6. But the comparison is between the enlarged part of the dwellinghouse and the original dwellinghouse. In this case the width of the enlarged part of the dwellinghouse is the combined width of the proposed extension and the existing single storey rear extension and this is greater than half the width of the original dwellinghouse. The development therefore does not satisfy Class A and is not permitted development.
7. I have taken into account the Department for Communities and Local Government Permitted Development for householders Technical Guidance (the Technical Guidance) in place at the date of the application. Whilst it does not have the force of law it provides useful guidance and in this case supports the Council's reasoning.
8. I note the representations of a neighbour but the planning merits and other civil matters are not within the remit of this appeal.
9. Accordingly, for the reasons given above, I conclude on the evidence now available that the Council's refusal to grant a LDC 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.

Formal Decision

10. The appeal is dismissed.

S. Prail

Inspector

