

Appeal Decision

Site visit made on 6 December 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: 21 December 2016

Appeal Ref : APP/A2280/X/16/3153885

Land at 16 Lilac Road, Strood, Rochester, Kent, ME2 2LE.

- 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 Medway Council dated 26 April 2016.
- The appeal is made by Mr L. Bicheno.
- The application ref MC/16/0693 was dated 1 March 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 construction of a part two storey/part first floor rear extension.

Summary of Decision: the appeal is dismissed

Preliminary Matters

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.
2. The refusal the subject of this appeal refers to an application dated 11 February 2016. In correspondence during the course of the appeal the Council has confirmed that the application the subject of this appeal was dated 1 March 2016. They explain that an application dated 11 February 2016 was submitted on an incorrect form and not considered valid by the Council. I have therefore referred to the correct application date in the header above.

Main Issue

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

Reasons

4. The appeal property is a semi-detached dwellinghouse with an existing rear single storey extension.
5. Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 (the GPDO) sets out permitted

development rights and accompanying limitations and conditions as they apply to the enlargement, improvement or other alteration of a dwellinghouse.

6. Class A.1 (h) of the GPDO provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would have more than a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres or (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse. Class A.1 (i) of the GPDO provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3 metres.
7. The Appellant's case is that a representative of the Council told him that the measurements would satisfy permitted development rights and not require planning permission. But that is not a ground of appeal and I must consider whether the Council's decision to refuse the application was well founded based on the application before me. The Appellant also complains of difficulties experienced in identifying and completing the correct application form. Whilst I sympathise this is also not a ground of appeal. My attention is drawn to houses in the surrounding area which the Appellant says are similar to the proposal. But I must determine this application based on its facts and the planning merits of development in the area or other separate matters concerning the appeal site are not something for me to take into account.
8. The Council's reason for refusal is failure to comply with conditions at Class A.1(h)(i) and Class A.1 (i). On the plans before me I agree that these conditions are not met. For example, the plans show the proposed extension to be within 2 metres of the boundary of the dwellinghouse and the height of the eaves to exceed 3 metres. The development therefore does not satisfy Class A and therefore does not benefit from permitted development rights. The development requires planning permission.
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.

Formal Decision

10. The appeal is dismissed

S.Praill

Inspector