

Appeal Decision

Site visit made on 14 February 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 22 February 2017

Appeal Ref: APP/X0360/X/16/3152152

24 Fawn Drive, Three Mile Cross, Reading RG7 1WL

- 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 Nicholas Torres against the decision of Wokingham Borough Council.
 - The application Ref 160876 dated 1 April 2016 was refused by notice dated 25 May 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 certificate of lawful use or development is sought is a Single Storey Side Extension.
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Decision

1. The Appeal is dismissed.

Background information

2. The application/appeal site is located in a relatively new residential development, built (within a somewhat difficult to access) triangular area, formed by the main A33 Basingstoke Road and Grazely Road, in Three Mile Cross, to the south of Reading. The area is characterised by what can only be described as a 'typical new estate layout'. It comprises a variety of generally brick-built, semi-detached and detached houses in what the Council describes as being of a '*uniformed design pattern*'.

3. In September 2015 the Appellant submitted an application for planning permission to convert the existing garage into habitable accommodation to form an annexe and single storey extension to the property. The LPA refused the application; their reason being that '*By virtue of the resulting excessive frontage width of the host dwelling, the proposals (sic) unsympathetic roof form and angular building line, it would unbalance the group of three terraced dwellings (nos, 20, 22 and 24) and introduce an incongruous and prominent feature in the streetscene to the significant detriment of the character and the appearance of the surrounding area*'. The LDC application, the subject of this appeal was then submitted on 1 April 2016. The Council indicates that there is no further relevant planning history regarding the appeal property.

Main issue

4. The Council refused the LDC application on the basis that the development would fail to comply with the limitation A.1(e)(ii), under Class A, of Part 1, to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The main issue is whether or not the Council's decision to refuse the LDC was well-founded.

Reasons

5. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the local planning authority's reason for refusal and then deciding whether or not the reasons are well founded. The planning merits of the case do not fall to be considered. In this case the question to be asked is whether or not the single storey side extension would have been lawful for planning purposes on the date of the LDC application, 1 April 2016.
6. The GPDO, in Class A of Schedule 2, Part 1, sets out permitted development rights for development within the curtilage of a dwelling house. At A.1, '*Development not permitted*' is then set out under 11 headings, (a) to (k). At (e) it is stated that if '*the enlarged part of the dwelling house would extend beyond a wall which – (ii) fronts a highway and forms a side elevation of the original dwelling house*', development is not permitted by Class A.
7. The Department for Communities and Local Government's Technical Guidance - Permitted Development for Householders, (TGPDH), gives an explanation/ interpretation of the rules set out in the GPDO and how they are intended to be applied. However, the guidance is not definitive. Thus, although it should generally be followed, the particular circumstances of a case may mean that different views or interpretations can arise. In reaching my conclusions I have taken the TGPDH into account and applied it to the specific physical situation at the appeal property.
8. In support of the application the criteria relating to Class A are set out and it is contended that the proposal is not affected by limitations A.1 (a) to (k); A2 and A3 (Conditions). Other than A.1(e)(ii), referred to above, the Council appears to agree that this is the case, and I have no reason to disagree.
9. Turning to A.1(e)(ii), the TGPDH indicates that '*the extent to which an elevation of a house fronts a highway will depend on such factors as:*
 - (i) *the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not be fronting a highway;*
 - (ii) *the distance between the house and the highway – in cases where the distance is substantial, it is unlikely that a building can be said to 'front' the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the boundary.*
10. On behalf of the Appellant it is argued that the TGPDH is applicable to this case and that '*there is not margin for interpretation*' with regard to the factors (i) and (ii) set out above. A submitted plan (XTid6253-P-2SP-02) shows the side elevation being at an angle of 47 degrees to the highway. It is contended, therefore, that this demonstrates that the proposed extension satisfies the criteria set out in Class A of Part 1 of the GPDO and that it therefore constitutes 'permitted development'.
11. The Council considers that the 47 degree angle is a marginal difference to the guidance figure of 45 degrees and indicates that the side elevation in question is just 2.5m (at its closest) from the highway. In their view the distance of the side elevation from the highway does not represent a '*substantial*' distance, separating it from the highway and in considering both of the above factors and the corner plot situation, the proposed extension is not permitted development.

12. The LPA further argues that the two factors are not the only ones to be taken into account in such situations and that it is necessary to have regard to the overall situation. The positioning of No 22, on the inside of the bend at this point along Fawn Drive, is referred to and the fact that the whole of the existing side elevation is clearly visible when entering the road from the south east. It is also indicated that the garage is set back from the main house and sited obliquely so that the side elevation is completely exposed to public view from the highway, with which it bears a strong visual relationship.

13. Despite the 47 degree angle, I consider that this particular side elevation does 'front' that part of the highway to the east of the house. No 22 lies on a bend in the road and, when approaching the property from the south east, the garage and the whole of the side elevation are prominent features within the streetscene. There is only a narrow side paved/gravelled area between the house and the highway. The side elevation is by no means a '*substantial*' distance from the highway. In fact it is much closer than some other nearby situations on the newly developed estate and this reinforces the perception of the side elevation fronting the highway at this point.

14. The existing brick wall, between the side elevation and gateway adjacent to the garage, also emphasises the proximity of the house to the highway. On approaching the property, either by car or on foot, there is a definite perception of both the garage and the side elevation 'facing' or 'fronting' this section of Fawn Drive, before it turns to the west across the front (north) elevation of the house.

15. I disagree with the view put forward on behalf of the Appellant that '*there is not margin for interpretation*' in the TGPDH. The 'guidance' is just that and in any case refers to: the extent to which an elevation of a house fronts a highway will depend upon '*factors such as*'. Any figures quoted (including the 45 degree angle) are not prescriptive and the two factors, referred to above, are not the only ones to be taken into account. I agree with the LPA that it is necessary to have regard to the overall situation. Having done so, for the reasons set out above, it is my view that the side elevation of No 24 Fawn Drive, as a matter of fact and degree, does 'front' the highway.

16. Thus limitation A.1(e)(ii) does apply and it follows that I consider the Council's decision to refuse a LDC to be well-founded. The appeal, therefore fails.

Other Matters

17. In reaching my conclusion I have taken into account all of the other matters raised by the Council and on behalf of the Appellant. These include the initial application/appeal documents; the respective appeal statements and the Appellants final comments dated 25 August 2016. However, none of these is of such significance to alter my conclusions or to change my decision that a LDC should not be issued in this instance and that the appeal should fail.

Anthony J Wharton

Inspector