

Appeal Decision

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/Y3615/X/16/3158575

Halloween Cottage, Forest Road, Horsley, Surrey KT24 5ES

- 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 Fabian Steele against the decision of Guildford Borough Council.
 - The application Ref 16/P/00867, dated 28 April 2016, was refused by notice dated 26 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 single storey side extension to existing dwelling see drgs 773.15.1/2H, with foul drainage to mains sewer and surface water to soakaway.
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issue

2. The development for which the LDC is sought is set out in the summary details above. The dispute between the parties is the way that Schedule 2, Part 1, Class A.1 (d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) should be interpreted. The drawings showing the existing dwelling and the proposed development are perfectly adequate to enable that interpretation to be made. In the circumstances no site visit was required.
3. The main issue therefore is whether or not the development proposed would be permitted by Schedule 2, Part 1, Class A of the GPDO. My determination of the appeal must be based solely on an interpretation of the statute as it applies to the development proposed. The planning merits of the scheme can have no bearing on the outcome of the appeal and are not therefore considered.

Reasons

4. Halloween Cottage is a detached dwelling with a steep, thatched gable roof. In both the front and rear roof slopes there are three dormer windows, each with a cat slide roof set from the main roof ridge. To one side of the dwelling is a detached garage. The LDC is sought for a single-storey extension to the other side. This would be set back slightly from the front elevation and would extend beyond the rear elevation. It would have a flat roof with a parapet wall at the
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front. The application drawing shows this element to be some 3.4m in height. Although not dimensioned, the flat roof would be lower than this.

The evidence

5. The Planning Practice Guidance confirms that the applicant is responsible for providing sufficient information to support an application¹. The application in this case was supported by two drawings and a location plan in addition to the application form. That simply asserts that the development is '...to be constructed within the guidelines of section A1 of Schedule 2 of permitted development rights' without any further elaboration. At application the drawings were therefore relied upon to speak for themselves.
6. The Council's evidence comprises the officer report on the application. As is common in the consideration of such applications it is essentially a check-list of the proposal against the limitations and conditions set out in the relevant Class of the GPDO. In this case, that is Schedule 2, Part 1, Class A. The Council concludes that the proposal would comply with all those that are applicable except Class A.1 (d). On this, the report says 'the height of the eaves of the extension would exceed the height of the eaves of the existing dwellinghouse. Therefore the proposal fails to comply with paragraph A (d) (*sic*).' No further explanation for that conclusion has been given.
7. The appellant considers that the Council officer has made a mistake and has incorrectly assessed the proposal. The gist of the appellant's case is twofold.
8. Referring to the Technical Guidance², the appellant argues, first, that the eaves height of the proposed extension for the purpose of the assessment is that of the flat roof, not the parapet. Second, quoting the Technical Guidance in respect of the way that the height of the eaves should be measured, it is argued that it can be seen from the proposed south elevation drawing that the '...top of the flat roof is way below the technical Eaves height of the original house...'. However, the appellant does not substantiate that argument by reference to any specific level on an application drawing or by identifying what, for this purpose, the eaves are considered to be.

Appraisal

9. The term 'eaves' is not defined in s336(1) of the principal Act. It is not defined either in Article 2(1) of the GPDO which sets out the interpretation of terms used generally within it. Nor is there any specific interpretation of terms used in Schedule 2, Part 1, Class A as there is for other Classes, for example, Schedule 2, Part 1, Class B. Article 2(2) of the GPDO does however explain how 'height' should be construed unless the context requires otherwise. In essence it should be measured up from ground level; what that means is also set out.
10. The Technical Guidance sets out the Department's view of the way in which the GPDO might be interpreted although it is for the courts to determine how it should be construed. It is therefore a material consideration to which I attribute significant weight. In relation to Schedule 2, Part 1, Class A.1 (d) it says this:

¹ Paragraph 006 Reference: ID: 17c-006-20140306

² Permitted development rights for householders April 2016 Department for Communities and Local Government

For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. (emphasis added)

11. It also says, as the appellant correctly points out, that parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height. The two illustrations give limited assistance since they are concerned with how to measure the eaves height of a proposed extension. At issue here is the eaves height of the existing dwelling. They do however confirm what is said in the quoted text above, namely, that the eaves are the point where the roof slope meets the outside wall. The illustration on page 13 of the Technical Guidance further confirms that for the purposes of Schedule 2, Part 1, Class A.1 (d) the eaves of any extension cannot be above a horizontal line drawn through the point where the roof and the external walls of the house meet.
12. It is plain from application drawing 773.15.2H that the height of the eaves (the top of the proposed extension roof) of the part of the dwelling to be enlarged would be above that notional horizontal line on the appeal property where the lowest point of the roof slope meets the outside wall of the existing dwelling. This is clear whichever of the four elevations is considered. The Council's assessment that the development proposed would not comply with Schedule 2, Part 1, Class A.1 (d) is therefore correct and the appeal must fail.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'single storey side extension to existing dwelling see drgs 773.15.1/2H, with foul drainage to mains sewer and surface water to soakaway' 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.

Brian Cook

Inspector