
Appeal Decisions

Site visit made on 27 February 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 07 March 2017

Appeal A: Appeal Ref: APP/Q3630/X/16/3151352

4 Riverside, Windsor Road, Egham, Surrey TW20 0AA

- 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 Rory Dwyer against the decision of Runnymede Borough Council.
 - The application Ref RU.16/0470, dated 4 March 2016, was refused by notice dated 24 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 roof alteration – adding a roof dormer to the east elevation.
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Appeal B: Appeal Ref: APP/Q3630/X/16/3157161

4 Riverside, Windsor Road, Egham, Surrey TW20 0AA

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Rory Dwyer against Runnymede Borough Council.
 - The application (Ref.RU.16/0970) is dated 27 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 add an east first floor enlargement above an original existing ground floor. Removing existing current cat slide roof and utilising the removed roof volume by adding a new roof above the new enlargement.
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Decisions

Appeal A: Appeal Ref: APP/Q3630/X/16/3151352

1. The appeal is dismissed.

Appeal B: Appeal Ref: APP/Q3630/X/16/3157161

2. The appeal is dismissed.

Background and Main Issue

3. 4 Riverside is a large property standing in quite extensive grounds next to the River Thames. It appears to be common ground that the elevation facing the River is the principal elevation of the dwelling. It follows therefore that the southern elevation (or the south west elevation as it is defined on the
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application drawings) is the rear elevation and the elevation that both applications seek to alter is a side elevation.

4. There is a very extensive planning history to the property. Indeed, in the Council's Appeal B statement it covers nearly six sides of paper. At the time of my site inspection work was in progress on a number of different elements. At the rear of the property these have resulted in extensions to the living, dining and utility rooms and, in part, explain the discrepancies between the 'existing' floor plans supplied with each appeal application.
5. However, they do not explain the different sizes of the two walk-in wardrobes in bedrooms 2 and 3 on the first floor. Those shown on drawing 14-44-300 (Appeal B) seem to me to be more accurate. Those shown on drawing 14-44-200 (Appeal A) are too large.
6. Both appeal schemes seek to enlarge bedrooms 2 and 3. They propose to do so in different ways and only one of the schemes could be implemented. Of importance to the determination of both appeals is an understanding of the original dwelling. The drawings as they depict this elevation were therefore clarified during my site inspection.
7. At ground floor level there is a single-storey element that originally extended across the width of the side elevation and projected slightly forward of the principal elevation. It therefore forms part of the original dwelling. The utility room extension has been added at the rear of this original element with the distinction between the original and the new being clear on the ground. It is equally clear that the works proposed in both schemes do not affect or rely upon the recently built utility room extension.
8. At first floor level the bulk of the elevation is taken up by a cat slide roof that slopes down from the main roof eaves across the space above the ground floor single-storey element to the outer edge of its roof. In effect, it forms the roof over the bulk of the single-storey element. To either side of the cat slide roof a narrow width of side wall can be seen. In each flank elevation of the cat slide roof there is an air brick. These can be seen in each walk-in wardrobe referred to above which utilise the roof space created by the design of this elevation.
9. In summary therefore the side elevation of the original dwelling has a stepped wall with the narrow-width external first floor walls either side of the cat slide roof being set back from the ground floor utility room (as it now is) external wall.
10. The main issue for the determination of these appeals is whether or not the development proposed in each would have been permitted by Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at the date when each application was made. In my judgement, neither would have been and both appeals therefore fail. The reasons for this view are set out below.

Appeal A

11. This scheme proposes the insertion of a tile hung dormer into the cat slide roof. It would have two windows, one to each bedroom. It is common ground that this application falls to be determined against the provisions in Schedule 2, Part 1, Class B of the GPDO. The Council accepts that most of the limitations and conditions set out in the Class would be met; I see no reason to disagree. It is

therefore further agreed that the dispute between the parties concerns the extent to which the scheme would comply with the limitation set out in Class B.1 (d) (additional cubic content of the resulting roof space) and with condition B.2 (b) (ii). I shall however consider them in reverse order.

Condition B.2 (b) (ii)

12. Development is permitted by Class B subject to, among others, this condition which says:

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 face of any external wall of the original dwellinghouse;
13. The Department for Communities and Local Government (DCLG) has issued Technical Guidance¹ in both April 2014 and again in April 2016 under a slightly different name. It is the April 2014 version that was current when this application was made although the appellant refers to the later version in the grounds of appeal.
14. The Technical Guidance is a material consideration to which I attach substantial weight. It is however guidance and it sets out DCLG's view of the way the GPDO might be interpreted; it is for the courts to determine how it should be interpreted. Neither party has brought to my attention any court judgement of relevance to the issue before me and I am not aware of any.
15. Furthermore, the Technical Guidance can only provide by way of examples guidance about those types of development that may be of most interest to householders. It does not claim to be exhaustive or to cover every circumstance. There is no illustration in either the 2014 or the 2016 versions of an alteration to a roof slope that is set below the level of the main roof and which also covers a part of an elevation of the dwelling. The circumstances of this appeal are not therefore specifically illustrated.
16. The difference between the two versions of the Technical Guidance to which the appellant draws attention is the additional wording introduced into the 2016 document to address the vexed question of L-shaped dormers. That passage relates, and in my view only relates, to a specific type of enlargement which the appeal scheme is not. I do not consider that the phrasing of the 2016 Technical Guidance can be deconstructed as the appellant has sought to do.
17. I acknowledge that the appellant does not consider this condition to be applicable at all to the appeal proposal. My understanding of the reasoning for this position is that the roof slope into which the dormer would be inserted is not a wall; nor does it cover or conceal an external wall of the original dwelling. From my site inspection I am able to agree the latter point.
18. Therefore, in the absence of any specific Technical Guidance on the particular circumstances of the appeal development it is necessary to consider the wording of the statute in order to determine the issue.
19. In this case the enlargement would not join the original roof to the roof of a rear or side extension. It would be installed into the already existing cat slide roof slope. The exception within the condition quoted above does not therefore apply.

¹ Permitted Development for Householders: Technical Guidance

20. The outside face of the external wall of this side elevation of the original dwelling is visible to either side of the cat slide roof. That roof therefore already extends beyond the external wall. Any insertion into it must, by definition, also extend beyond the outside face of an external wall. The appeal proposal would therefore not be permitted by virtue of the condition.
21. Appeal A must therefore fail and, in the light of that conclusion, I do not need to consider the development against Class B.1 (d).

Appeal B

22. In this appeal it is proposed to remove the cat slide roof and add a further storey above that part of the existing single-storey ground floor element that is below the cat slide roof. A hipped roof would then rise from the existing main dwelling eaves level and join, but be subservient to, the main roof ridge. The appellant confirms in evidence that the height of the enlargement would exceed 4m.
23. This proposal is essentially a resubmission of one that was dismissed on appeal in December 2015² (the 2015 appeal decision). That application was submitted in September 2014. The appeal was therefore determined against the provisions of the previous GPDO. However, the wording of the material part of Schedule 2, Part 1, Class A in the 2015 GPDO remains exactly the same. Development is not permitted by Schedule 2, Part 1, Class A.1 (j) if:
- The enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would-
- i) Exceed 4m in height,
 - ii) Have more than a single storey, or
 - iii) Have a width greater than half the width of the original dwellinghouse.
24. As set out in the summary details above, the Council failed to determine this application. In its appeal statement it confirms that it relies on the reasoning of the Inspector in the 2015 appeal decision.
25. As I understand the appellant's case it is not accepted that the part of the dwelling to be altered is a side elevation. Additionally however, if it is, reliance is placed on the explanation of the phrase 'enlarged part of the house' in the 2016 Technical Guidance. This explanation was not available to my colleague in 2015. As I understand the case, the appellant believes that the appeal proposal amounts to a single-storey addition over a single-storey element that already exists. The development itself would not therefore have more than a single storey. Furthermore the case made is that to be prohibited by Class A.1 (j) the word 'and' has to be read into the text at the end of clause (i). Although on the appellant's evidence the development would exceed 4m in height, it is argued that it would not be prohibited because it does not also have more than one storey.
26. Dealing first with the side elevation point, I have already concluded by way of background to the two appeals that the material side elevation of the original dwelling is stepped. Even if the appellant is correct and the cat slide roof is somehow not part of this side elevation, it is clear from the submitted drawings that the external walls of the proposed enlargement would connect to and thus stand beyond the external walls of the original dwelling to either side of the cat

² Ref: APP/Q3630/X/15/3006140

slide roof. I acknowledge that it would not stand beyond the wall forming the side elevation of the single-storey ground floor element. But that does not alter my overall conclusion on this point because, like my colleague, I am not aware of any evidence that says that there cannot be more than one wall within a side elevation.

27. The proposal does therefore fall to be considered against Class A.1 (j); a conclusion that is consistent with that of my colleague. As the appellant accepts that the development proposed would rise to a height that exceeds 4m, that is sufficient to confirm that the development proposed would not be permitted by Class A.1 (j) unless what I understand to be the appellant's argument about the way it should be construed is correct.

28. In my view it cannot be correct. The Technical Guidance says this on page 23:

Where an extension is beyond any side wall, the restrictions in (j) will apply. Any extension can only be a single storey, must be less than 4 metres in height and can only be half the width of the original house. The width of the original house should be calculated at its widest point.

29. It is clear that if the development proposed fails to comply with any of the three clauses it cannot be permitted development. Furthermore, the commentary in the Encyclopedia of Planning Law and Practice says this:

The term 'more than one storey' applies to the part of the house being enlarged through permitted development. This could comprise both a two storey extension to a house and the addition of a storey onto an existing part of the house.³ (emphasis added)

30. In this case the part of the dwelling that would be enlarged is a substantial part of the side elevation. The enlarged part of the dwelling would include the original single-storey ground floor element and the new first floor addition to create a two-storey enlargement. That is more than a single storey. The development proposed cannot therefore be permitted by Class A.1 (j) (i) and (ii) of the GPDO.

31. The appeal must therefore fail.

Overall conclusions.

Appeal A

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'roof alteration – adding a roof dormer to the east elevation' 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.

³ Ref: 3B-1042.12

Appeal B

33. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of 'add an east first floor enlargement above an original existing ground floor. Removing existing current cat slide roof and utilising the removed roof volume by adding a new roof above the new enlargement' 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