

Appeal Decision

Site visit made on 7 February 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/H1515/D/17/3166456

Oakwood, Little Hyde Lane, Ingatestone, Essex CM4 0HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr & Mrs Alan Austin against the decision of Brentwood Borough Council.
 - The application Ref 16/01442/PN24, dated 18 October 2016, was refused by notice dated 21 November 2016.
 - The development proposed is single storey rear extension. The proposed extension would extend 7.136m beyond the rear wall of the original dwelling, the maximum height of the proposed extension would be 3.990m and the proposed eaves height would be 2.581m.
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Decision

1. This appeal is allowed and approval granted under the provisions of Schedule 2, Part 1, paragraph A4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for a single storey rear extension. The proposed extension would extend 7.136m beyond the rear wall of the original dwelling, the maximum height of the proposed extension would be 3.990m and the proposed eaves height would be 2.581m at Oakwood, Little Hyde Lane, Ingatestone, Essex CM4 0HJ in accordance with details submitted pursuant to Schedule 2, Part 1, Paragraph A4(2) of the GPDO.

Procedural matter

2. The provisions of the GPDO require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of this appeal has been made in the same manner.
 3. On the original application form the proposal was described as 'single storey side extension to rear wall of dwellinghouse. The proposed length and ridge/eaves height of the proposed extension are shown on the attached drawing SK11 rev B'. The Council during the course of determining the application changed the description to 'Single storey rear extension. The proposed extension would extend 7.136m beyond the rear wall of the original dwelling, the maximum height of the proposed extension would be 3.990m and the proposed eaves height would be 2.581m'. I consider that this more accurately reflects the proposal and I have amended the banner heading accordingly.
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Reasons

4. Schedule 2, Part 1, Class A of the GPDO allows the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions, limitations and restrictions.
5. Class A.1.(g) allows until the 30 May 2019 for detached houses to have a single storey extension up to 8 metres in length as long as it does not exceed 4 metres in height. However, before beginning such a development the developer must apply to the Council for Prior Approval.
6. Class A.4. sets out the conditions which apply to development permitted by paragraph A.1.(g) and states at A.4.(3) that the Council may refuse an application for Prior Approval if they consider that the proposed development does not comply with the conditions, limitations or restrictions set out in Class A.
7. In this instance the Council consider that the proposed extension would exceed 4 metres in height and therefore would not comply with the requirements of the GPDO. The appellant, however, advocates that the extension would be less than 4 metres high and therefore the limitations set out in Class A would be met.
8. The difference in height arises from the point on the ground where the extension would be measured from. The Council consider that it should be the existing lawn to the side of the house which they refer to as the natural ground level. However, the appellant advocates that a footpath that runs along the side elevation of the house should be taken as ground level as this is immediately adjacent to the house.
9. For the purposes of the GPDO 'ground level' is defined as "*the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.*" Further guidance on defining ground level is provided in the Technical Guidance¹.
10. Whilst previous versions of the Technical Guidance referred to natural ground level the 2016 version simply refers to ground level which it then defines as "*the surface of the ground immediately adjacent to the building in question*". As this is the most recent version of the guidance I agree with the appellant that references to the previous version are not valid.
11. The Technical Guidance further refines the definition of ground level by excluding any addition that is laid on top of the ground giving the example of decking. I note from their statement that the appellant advocates that the footpath is constructed on top of a solid earth base and whilst they accept that the paving that is laid on top of the footpath should be excluded they contend that the earth underneath the paving forms the ground level adjacent to the house.
12. Whilst the footpath is definitely the result of an engineering operation, from what I saw at the site and the evidence submitted with the appeal it would

¹ The Department For Communities and Local Government Permitted development rights for householders Technical Guidance (2016)

appear likely that it was constructed at or around the same time as the house and almost certainly it has been in situ for many years. Therefore I conclude, on the balance of probability subject to the underside of the path being solid earth, as advocated by the appellant, that this should be taken as the ground level for the purposes of measuring the height. This is consistent with the Technical Guidance and the findings of a previous Inspector whose decisions² were submitted by the appellant to support their case.

13. As a result, on the basis of the evidence before me the extension would be less than 4 metres high and as a result I conclude that the proposal would comply with the requirements of Class A.1.(g).

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed and approval granted. In granting approval the appellant should note that the GPDO requires at Paragraphs A4(13), (14) and (15) that the development shall be completed on or before 30 May 2019 and that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion. Such notification shall include the name of the developer; the address or the location of the development, and the date of completion.

Jo Dowling

INSPECTOR

² PINS reference: APP/D0840/C/13/2204053 and APP/D0840/C/13/2204054