
Appeal Decision

Site visit made on 28 March 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 11 April 2017

Appeal Ref: APP/Y9507/X/16/3157675

The Lodge, Wyck Lane, Binsted, Alton GU34 3AH

- 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 G Nightingale against the decision of South Downs National Park Authority.
 - The application Ref SDNP/16/03009/LDP, dated 15 June 2016, was refused by notice dated 18 August 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 flat roof rear extension.
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Summary Decision: The appeal is dismissed

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Authority's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful at the time the application was made to the Authority.
 2. The enlargement, improvement or other alteration of a dwellinghouse is permitted under Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), subject to the limitations at Classes A1 and A2 and the conditions A.3 and A.4 where relevant. These limitations and conditions apply differently to various elevations of the original dwellinghouse. It is therefore first necessary to establish which of the elevations constitute the front, side and rear elevations of the original dwellinghouse, and which of those elevations is the principal elevation for the purposes of Class A of the GPDO. In this context, the original dwellinghouse is that defined in the GPDO. In this case, there is no dispute that the original building is the building as existing on 1 July 1948.
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3. The Lodge is a detached two storey dwelling standing within a substantial plot. The main highway serving the house is Wyck Lane, which runs along both the north and east boundaries of the plot. The appeal property sits at an angle to Wyck Lane, such that the north-west and south-west elevations of the house may both be described as fronting onto the highway, albeit at an angle in both cases. The building exhibits a number of architectural features, including bay features, gabled dormer windows and substantial chimney stacks. These features are present, to varying extent, on most elevations. However, the south-west elevation contains the main entrance door. This door is accessed by a path leading from a pedestrian gate onto Wyck Lane.
4. The *Permitted development rights for householders: Technical Guidance* (Technical Guidance) published by the Department for Communities and Local Government in April 2016 indicates that in most cases the principal elevation will be that part of the house which fronts, directly or at an angle, the main highway serving the house. The Technical Guidance also indicates that there will only be one principal elevation on a house and that usually, but not exclusively, the principal elevation will be that understood to be the front of the house. Consequently, given the location of the main entrance and notwithstanding the presence of architectural features on other elevations of the house, I consider that the south-west elevation is the principal elevation of the house for the purposes of the GPDO.
5. Moreover, because it contains the main entrance and a pedestrian link to the main highway, I also consider that the south-west elevation should be regarded as the front elevation. The corollary is that the north-east elevation, which is the elevation on which the proposed extension would be located, should be regarded as the rear elevation. For that reason, I am satisfied that the proposed development is correctly described on the application form as a rear extension.
6. The appeal property has been extended twice since 1 July 1948. The first extension was granted planning permission in February 1995 under reference 33028 and is described on the Decision Notice as a two-storey rear extension. The drawings submitted with that application clearly show that the extension does not project beyond the south-east side elevation of the original building.
7. The second extension was granted in September 2009 under reference 33028/06 and is described by the Authority as a two storey extension to side. I have been provided with a copy of the plans approved under that application. These plans show that the side extension, to the south-east elevation, did not join with two storey rear extension granted planning permission in February 1995 under reference 33028. The plans show a section of the original wall between the two-storey rear elevation and the proposed two-storey side extension. I will return to this point below.
8. The essence of the Authority's case is that, by reason of its proximity to the two-storey rear extension, the proposed single-storey rear extension would constitute a contiguous extension with the two-storey rear extension and two storey side extension. It is therefore the Authority's position that the proposed single-storey rear extension would not comply with the limitation at Class A.1 (j)(iii) insofar as the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse

and would have a width greater than half the width of the original dwellinghouse.

9. In support of its position, the Authority has referred me to two appeal decisions, both relating to the same property in Staplehurst, Kent. These appeals both concerned proposals for an L-shaped extension, it being part of the appellant's case that, in summary, the side and rear components of the extension would comply with the limitations within the versions of the GPDO then in force if considered individually. In the first of these decisions (APP/U2235/X/12/2177741), the Inspector found that in order to benefit from the provisions in the GPDO in that respect the separation would need to be material. The Inspector in the second appeal (APP/U2235/X/12/2195960) concurred with the approach adopted by the Inspector in the first appeal, and went on to find that a separation distance of 25mm could not be considered to be material on any measurement.
10. The Authority applies the principle at the heart of these two appeal decisions to the current appeal proposal. The gap between the proposed single-storey rear extension and the existing two-storey rear extension is some 5cm. The Authority considers that this degree of separation is not a material one, and invite me to take the same approach as my colleagues in the above appeals. The Authority also refers me to the examples at pages 2 and 27 of the Technical Guidance that illustrate the approach to be taken in determining whether an extension is more than half the width of the original house.
11. In my judgment, a gap of just 5 centimetres cannot be considered to be a material separation between two extensions and does not accord with the approach advocated in the Technical Guidance. Moreover, I noted during my site visit that the lower part of the wall to the existing two storey extension, and to which the proposed single-storey extension would be adjacent, features a plinth that projects slightly beyond the face of the wall above and is capped by an angled brick piece. This would reduce the separation between the two extensions even further, possibly to the extent that the two extensions would touch.
12. As a matter of principle, I would therefore agree that the proposed single-storey rear must extension must be considered to be contiguous with the existing two-storey rear extension. The question remains, however, whether the existing two-storey rear extension is then contiguous with the existing two-storey side extension, such that the three extensions would collectively have a width greater than half the width of the original dwellinghouse and extend beyond a wall forming a side elevation of the original dwellinghouse.
13. As indicated above, the drawings provided with the applications for these extensions clearly show a section of the original wall between the two-storey rear extension and the proposed two-storey side extension. This suggests that the existing two-storey rear extension is not contiguous with the existing two-storey side extension. This would be analogous to the example at page 28 of the Technical Guidance, in which the rear extension and the side extension are show as being separate entities. In that example, the later extension would be measured separately and would then not have a width greater than half the width of the original dwellinghouse, such that the second extension would be permitted development.

14. I am not, however, convinced that this is in fact the situation with the appeal property. During my site visit, I noticed that, although a reasonable match in terms of colour and texture, there was nevertheless a discernible difference between the appearance of the bricks used in the construction of the front elevation of the original part of the house and those used in the side extension. Despite close visual and tactile examination, I could not detect a similar difference between the bricks used in the construction of the side extension and those used in the construction of the rear extension. Consequently, the section of the original wall between the two-storey rear elevation and the two-storey side extension evident on the application drawings was not apparent to me on site, either in terms of the bricks used or a discernible difference in the mortar between them.
15. It is evident from the planning history that the two-storey rear extension and the two-storey side extension could not have been constructed as a single building operation. Nevertheless, I have no evidence before me to explain why the two extensions have a similar external appearance. In the absence of that evidence, I am not in a position to determine whether the proposed single-storey extension would be contiguous with the existing two-storey rear extension and the existing two-storey side extension, and therefore whether the extensions would collectively have a width greater than half the width of the original dwellinghouse.
16. Similarly, I am not in a position to determine whether the proposed extension would accord with the limitation at Class A.2(b). This states that, in the case of a dwellinghouse on Article 2(3) land, that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
17. I am satisfied that the proposed single-storey rear extension would accord with Article 3, Schedule 2, Part 1, Class A of the GPDO in all other respects. However, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful at the time the application was made to the Authority. On the information available to me, I am not persuaded that the appellant has discharged that burden.

Conclusion

18. For the reasons given above, I conclude on the information before me that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey rear extension at The Lodge, Wyck Lane, Binsted, Alton GU34 3AH was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

19. The appeal is dismissed.

Paul Freer

INSPECTOR