
Appeal Decision

Site visit made on 30 March 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/Y3615/X/16/3158713

Studio, Blue Ryde Lodge, The Drift, East Horsley, KT24 6NU

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Gary Nason against the decision of Guildford Borough Council.
 - The application no: 16/P/01525, dated 19 July 2016, was refused by notice dated 13 September 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Relocation of the front door, two storey rear extension, conversion of basement to habitable accommodation and a new light well, conversion of garage to habitable accommodation, rear ground floor infill extension and addition of five new velux windows.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 19 July 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
3. The description of the development given by the appellant on the application form and appeal form is "Two Storey Rear Extension". The application plans indicate that the two storey extension is part of a wider scheme of intended works to enlarge and alter the property. In dealing with the application the Council had changed the appellant's description to include other elements of the wider scheme. As there is some evidence before me concerning the wider scheme I shall adopt the Council's description for the purposes of this determination.
4. In considering this appeal I have had regard to the technical guidance for householder developments¹ [hereafter "the Technical Guidance"]. Whilst not a definitive statement of the law the Technical Guidance gives an explanation of the rules on permitted development and how government intends that they are applied. As such, this guidance should be followed

¹ Current national guidance on permitted development rights for householders is set out in Department for Communities and Local Government, Permitted development for householders, Technical Guidance (6 April 2017). It is this current version to which I shall refer. At the time of the application an earlier version of the Technical Guidance (published 13 April 2016) was in use. There are no material differences between the two versions insofar as relevant to the issues in this appeal.

unless it has either been overturned by the Courts or it can be clearly demonstrated that it does not apply to the particular facts of the case.

5. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.

Main issue

6. The main issue in this appeal is whether the decision to refuse the LDC was well founded.

Reasons

7. The appeal property had been used as a dwellinghouse without planning permission. By the passage of time it had accrued lawful use rights. An LDC for its use as a dwellinghouse was granted by the Council in July 2014.
8. It is common ground between the parties that the property is now separate from the main dwelling² and has its own domestic curtilage. From what I saw at my site visit I have no reason to disagree. There is no dispute, in principle, that the property can take advantage of permitted development rights under Part 1³ of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) [hereafter "GPDO"] subject to compliance with its various limitations and conditions.
9. In order to be permitted development, a proposal must meet all the limitations and conditions under each and every Class relevant to the proposal.⁴ The Council consider Classes A, B, C and G are relevant in this case. This is not disputed by the appellant.
10. Whilst it is agreed the proposed development complies with most of the relevant limitations and conditions of the relevant Classes, the Council considers the development to fall foul of the limitations set out in paragraphs A.1(e)(i), A.1(h)(i), A.1(j) and B.1(d)(ii). I shall, therefore, focus upon these paragraphs for the purposes of the determination as it is here where the main areas of contention between the parties lie.

The original dwellinghouse

11. Many of the limitations of the GPDO (including those of concern to the Council) refer to the "original dwellinghouse" or, in the case of Class B, the "original roof". The "original dwellinghouse" (or "the original roof" as the case may be) is the baseline against which the relevant permitted development limitations are set. Article 2, "Interpretation", of the GPDO states that the term "original", in relation to a building, means as it existed on 1st July 1948 or, if built later, the building as so built.

² The main dwelling is a listed building. However, there is no suggestion that this has any bearing upon the relevant issues in this appeal.

³ Part 1 of Schedule 2 to the GPDO concerns "Development within the curtilage of a dwellinghouse". It provides for the carrying out of such development as permitted development subject to conditions and limitations.

⁴ This is stated in the Technical Guidance (page 8).

12. There is no suggestion, in this case, that the building pre-dates 1948. The "original" building, therefore, is the building as so built. However, the building, when so built, was not a dwelling.
13. There is a difference in opinion between the parties as to whether the term "original dwellinghouse" should be interpreted to mean the building as originally built (albeit it was not built as a dwelling) or the building at the time that its use as a dwelling was determined as lawful. However, the matter is of little consequence as the appellant has confirmed that the building which existed at the time of the LDC (dwellinghouse) application is one and the same as the building as originally built, and that which I saw at my site visit. The building has had no additions since it was built. There is no contradictory evidence.

14. I shall, therefore, proceed to consider the limitations on that basis.

A.1(e)(i) – whether the enlarged part of the dwellinghouse extends beyond a wall which forms the principal elevation of the original dwellinghouse

15. There is no dispute between the parties that the "principal elevation" is the front elevation of the building. The proposal includes the formation of a light well forward of the front wall which is associated with the conversion of the basement area to habitable accommodation. The Council considers the light well to be an enlargement falling outside of limitation A.1(e)(i).
16. The appellant argues that, because no habitable floor area is created, the light well cannot be considered an extension. Alternatively, (it is argued) the light well should be regarded as de minimis or be considered under the allowances for a porch. For the following reasons, I do not accept these arguments.
17. Taking the alternative arguments first the light well, in my view, would not fall under the de-minimis⁵ principle when taking into account its width, depth and extent of excavation proposed. The light well would amount to an act of operational development⁶ as a matter of fact and degree.
18. Neither, to my mind, would this operational development fall within the permitted development provisions for a porch⁷. The GPDO does not define "porch" but, when applying its ordinary meaning, it would be a small covered structure positioned at a doorway entrance. Infact the GPDO stipulates that, to benefit from permitted development, a porch is to be "outside any external door of a dwellinghouse". I cannot see that the light well, being mainly below ground level and having no association with any entrance to the building, could fall within the meaning of "porch" such that it could benefit from permitted development rights under these provisions.
19. As to whether the light well is an enlargement to the dwelling, the determinate issue is not whether additional floorspace is provided but is simply whether the dwelling is made bigger. When taking into account its position immediately adjacent to the dwelling, and its relationship to the

⁵ "De minimis" means something which is on too small a scale for the law to take account of it.

⁶ The definition of development is set out in s55 of the Act and includes, amongst other things, the carrying out of building, engineering and other operations in, on, over and under land.

⁷ Class D to Part 1 of Schedule 2 to the GPDO provides for the construction of a porch outside any external door of a dwelling subject to limitations.

living accommodation within the basement, I consider it possible that the light well could be regarded as an enlargement. However, in this position to the front of the dwelling, an enlargement cannot be permitted development because of limitation A.1(e)(i). Even if the light well is not an enlargement it is development nevertheless, that would fall outwith the permitted development provisions of Part 1 to Schedule 2. Either way, the construction of the light well would have required express planning permission and, without it, could not have been lawful.

A.1(h)(i) – whether the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres

20. There is no dispute that the extension is of more than single storey. The Council has not explained in detail its reasons as to why it considers the development to fail under this limitation. The appellant argues that the extension is 3 metres deep and that the soffit and eaves overhang should not be taken into account.
21. The existing rear elevation is stepped⁸ with the existing garage part projecting a little further to the rear than the car port. These two walls, thus, are both rear walls of the original dwellinghouse. The rear elevation, as proposed, is also stepped. Dimensions on the proposed ground floor plan show that the rear walls are to be positioned 3 metres from the existing garage rear wall and 3 metres from the existing car port rear wall respectively such that neither wall will extend beyond the corresponding rear wall of the original dwellinghouse by more than 3 metres. In other words the footprint of the enlarged part of the dwelling does not extend more than 3 metres beyond the footprint of the original dwelling.
22. It is normal practice for sizes of buildings to be measured on the basis of ground coverage. There is nothing within the provision itself to indicate that “extend beyond” in this context should be interpreted other than in accordance with its normal meaning.
23. The Technical Guidance also provides advice on this point.⁹ It states that when measuring rear extensions the measurement should be taken from the base of the rear wall of the original house to the outer edge of the wall of the extension (not including any guttering or barge boards). This is shown in an explanatory diagram.
24. In the absence of any further evidence from the Council, I cannot see any reason to demur from the approach set out in Technical Guidance. When measuring the extension in this way, and setting aside the eaves overhang, the extension complies with limitation A.1(h)(i). I therefore find in the appellant’s favour on this point.

⁸ Page 20 of the Technical Guidance provides advice on extensions where the rear elevation is stepped.

⁹ The Technical Guidance, at page 21, provides advice on rear extensions that are more than single storey and explains that the measurement should be taken from the base of the rear wall of the original house to the outer edge of the wall of the extension (not including any guttering or barge boards). An explanatory diagram appears at page 17 of the Technical Guidance.

A.1(j) – whether the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would (i) exceed 4 metres in height, (ii) have more than one storey, or (iii) have a width greater than half the width of the original dwellinghouse.

25. The side elevation of the original dwellinghouse includes parts of the side wall of the garage to which the car port is attached. These parts of the garage wall are shown in the Existing Side Elevation (East) drawing which accompanies the application. The garage walls to either side, together with the side facing wall¹⁰ of the car port are all walls forming the side elevation of the original dwellinghouse.
26. The proposed extension wraps around the rear corner of the garage to adjoin the car port. Whilst the enlarged part of the dwelling would not extend beyond the car port side wall it would extend beyond this small section of side facing garage wall. As such, the proposal falls to be considered as a side extension as well as a rear extension.
27. The limitations of A.1(j) apply to “the enlarged part of the dwellinghouse”. Thus it is the entire extension, not just the part that extends beyond the original side wall, that needs to be considered against limitations (i), (ii) and (iii). The extension as a whole exceeds 4 metres in height and has more than one storey. Its width, spanning the full width of the original dwellinghouse, exceeds the permitted width, that being no more than half the width of the original dwellinghouse.
28. On this point I agree with the Council. The enlarged part of the dwelling would extend beyond a wall forming a side elevation and would exceed the permitted development limitations of A.1(j).

B.1(d)(ii) – whether the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres.

29. The Council considers that the roof enlargement complies with the conditions and limitations of Class B except on the matter of its cubic content.
30. The appellant has provided a drawing and calculations which indicate that the cubic content of the resulting roof space would be within the permitted amount. From the information before me the appellant’s calculations appear plausible. There is no specific contradictory evidence from the Council to throw doubt upon the appellant’s claim.
31. The burden of proof has been discharged. I do not find against the appellant in respect of this limitation.

Other matters

32. The appellant has supplied a drawing indicating that the light well could be re-positioned to the side elevation. That proposal, however, did not comprise part of the LDC submission. I cannot make a determination on its lawfulness within the scope of this appeal. I do, however, acknowledge that the basement conversion is not dependant upon the light well being to the front.

¹⁰ Whilst the car port is of open design its side elevation with supporting piers and solid pitched roof has sufficient substance and enclosure as to be considered a “wall” for permitted development purposes.

33. I have considered whether there are any elements of the scheme that could, individually, qualify for an LDC such as the re-positioning of the front door, rooflights, conversion of the garage and car port and basement conversion (setting aside the light well issue). However, the LDC proposal is, essentially, for a comprehensive development of the property with radical changes to the floor layouts and arrangements of the living accommodation such that there is an inter-dependency between these components and the extended part of the development. Whilst I do not rule out the possibility that there may be certain alterations, conversion and other works that could be undertaken as permitted development, the works as presented in the appeal proposal do not appear to be sufficiently severable from the extension, that being an unlawful element. I do not criticise the Council, therefore, for withholding the issue of an LDC in respect of the other identified components of the scheme.

Conclusion

34. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the relocation of the front door, two storey rear extension, conversion of basement to habitable accommodation and a new light well, conversion of garage to habitable accommodation, rear ground floor infill extension and addition of five new velux windows was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR