
Appeal Decision

Site visit made on 16 May 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 19 July 2017

Appeal Ref: APP/Q0505/X/16/3162606
26 Cowper Road, Cambridge, CB1 3SN

- 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 Mr and Mrs Alex Hazel against the decision of Cambridge City Council.
 - The application no: 16/0803/CL2PD, dated 2 May 2016, was refused by notice dated 27 June 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Rear second floor extension incorporating a box dormer.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. An accompanied site visit had been arranged but the appellant was not in attendance. The Council’s officer spoke to the agent on the telephone who gave permission for me to view the property from a shared passageway and path to the rear. I am satisfied, from what I saw and the evidence that has been supplied by the parties, that I have sufficient information to reach a decision.
3. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 2 May 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
4. In April 2017 amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) came into force.¹ The amendments included (amongst other things) an additional requirement under Class A of Part 1 to Schedule 2 (A.1(ja)) to assess the “total enlargement” (including any other extension(s) to which the proposed enlargement attaches) as well as the enlargement itself against the limitations set out in sub-paragraphs (e) to (j). However, that provision was not in force at the time of the LDC application. It is not relevant to this determination of lawfulness which is made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as “the GPDO”.

¹ The GPDO amendments were introduced by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2017.

5. Concurrent with the coming into force of the GPDO amendments Government published "Permitted development for householders, Technical Guidance (6 April 2017)" [hereafter "the Technical Guidance"]. At the time of the Council's decision, and when the statements were submitted, an earlier version of the Technical Guidance (published 13 April 2016) was in use. The guidance was updated to reflect (amongst other things) caselaw² in which the meaning of "the enlarged part of the dwellinghouse" had been examined, and the amended GPDO provisions. I shall refer to this latest version of the Technical Guidance for the purposes of this determination because it provides a more informed and up to date interpretation of the relevant law. I shall, however, bear in mind that its references to the amended provisions are not directly applicable to the case before me.
6. I have given both parties an opportunity to comment on the updated Technical Guidance insofar as it is relevant to the appeal. I have taken into account the comments made by the Council. No comments were received from the appellant.
7. Whilst not a definitive statement of the law the Technical Guidance should, as a general rule, be followed unless there are clear reasons why it does not apply in the circumstances of any particular case.
8. 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

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

Reasons

10. It is accepted, in principle, that the property can take advantage of permitted development rights under Part 1³ of Schedule 2 to the GPDO subject to compliance with its various limitations and conditions.
11. 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 considers Class A⁵ and Class B⁶ are relevant whereas the appellants' case is dependant upon Class B only.
12. There does not appear to be any dispute concerning whether the proposal would comply with the limitations of Class B. Whilst there is no calculation for its volume I have no reason to doubt that the enlargement would be within the 40 cubic metres allowance. However, even if the enlargement complies with the

² Hilton v Secretary of State for Communities and Local Government [2016].

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).

⁵ Class A of Part 1 to Schedule 2 of the GPDO concerns "The enlargement, improvement or other alteration of a dwellinghouse".

⁶ Class B of Part 1 to Schedule 2 of the GPDO concerns "The enlargement of a dwellinghouse consisting of an addition or alteration to its roof".

Class B limitations it could only be permitted development if it is a roof “addition or alteration” and nothing more; and that is a matter of fact and degree.

13. The enlargement, which is “L” shaped, takes the form of a box dormer extending across the full width of the existing roof slope and extending out across a sizable part of an existing two storey outrigger. The flat roof to the outrigger at this part, essentially, is replaced by the enlargement which extends almost to its full width and rises in height to form a third storey providing an additional room. To my mind these works go beyond what could, in the normal meaning of the term, be described only as an addition or alteration to a roof. The works would, as a matter of fact and degree, also amount to the enlargement of the dwellinghouse. They would, thus, fall to be considered under Class A as well as Class B.
14. Under Class A the Council has argued that the development would fail to meet limitation A.1(f) or A.1(h) in the alternative, and limitation A.1(i). I shall consider each in turn. In doing so I shall have regard to the Technical Guidance which distinguishes between “the enlarged part of the dwellinghouse” (that being the enlargement which is proposed under Class A) and “the total enlargement” (that being the proposed enlargement together with any existing enlargement).⁷ In measuring “height” the GPDO states that the measurement should be taken from ground level.⁸

Limitation A.1(f)

15. This limitation concerns “single storey” enlargements. A.1(f)(i) limits to 3.0 metres the extent to which a single storey enlargement can extend beyond the rear wall of the original dwellinghouse (4.0 metres if the dwelling is detached but the appeal property is part of a terrace).
16. When taking into account caselaw and the Technical Guidance, I consider that the extension in this case is “single storey” even though it sits into the roof of the property and upon an existing two storey element. That is because the enlargement itself, i.e. the LDC proposal which is being considered under Class A, is on a single level (second floor).
17. The rear elevation of the original dwellinghouse is stepped. The Technical Guidance explains (at page 20) that, in such a situation, each of these stepped walls will form the rear wall. If taking the plane of the stepped back section of wall and extending this upwards and outwards, cutting across the roof to the side (north) boundary, then the extension would extend beyond the plane of that wall.
18. As to whether it would “extend beyond” by more than 3.0 metres, the Technical Guidance says (at page 17) that the measurement should be taken from the base of the rear wall to the outer edge of the extension (not including guttering and barge boards).
19. This dimension is not explicitly transcribed onto the plan. The Council says that the enlargement extends by 3.15 metres. This has not been disputed by the

⁷ The Technical Guidance, under “General Issues” at page 7, distinguishes between and defines “the enlarged part of the dwellinghouse” and “the total enlargement”.

⁸ At paragraph 2, “Interpretation”, the GPDO states that, unless the context requires otherwise, reference to the height of a building is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground on which it is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

appellant. An internal floor measurement on the plan also indicates an extension of more than 3.0 metre depth.

20. If “extend beyond the rear wall” is to be interpreted in the way I have described in paragraph 17⁹ then, on the evidence, it appears that the extension would extend beyond the rear wall by more than 3.0 metres and would not, therefore, comply with limitation A.1(f)(i).
21. This point is not, however, in itself decisive as, under A.1(f)(ii), there is a height limitation of 4.0 metres. The GPDO says height is to be measured from ground level. There can be no doubt that this extension, albeit single storey, when measured from ground level is greater than 4.0 metres in height.
22. I therefore find that the enlargement would fail under limitation A.1(f).

Limitation A.1(h)

23. As I have found the enlargement to be “single storey” it follows that this limitation, which concerns enlargements of more than a single storey, does not apply to the appeal development.

Limitation A.1(i)

24. This limitation concerns the eaves height of developments which are within 2.0 metres of the boundary. The height of the eaves is limited to 3.0 metres.
25. The subject enlargement is almost to the boundaries, and thus well within 2.0 metres, to both sides. The eaves of the enlargement, which I take to be the point at which the upper surface of the flat roof meets the walls¹⁰, is well above 3.0 metres in height when measured from ground level. I therefore find the development to fail under this limitation.

Other matter

26. I also have reservations about whether the development would comply with limitation A.1(d) which limits the height of the eaves of the enlarged part of the dwellinghouse to a height which does not exceed the eaves height of the existing dwellinghouse. This limitation is not amongst those cited by the Council. As I have already found the development to fail under A.1(f) and A.1(i) this is not a point which I need to consider further.

Conclusion

27. For the reasons given above I conclude that the Council’s refusal to grant an LDC in respect of a rear second floor extension incorporating a box dormer 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

⁹ The appellant has not made any counter argument to this interpretation.

¹⁰ The Technical Guidance, at page 12, explains how “eaves” is to be interpreted in the case of a flat roofed extension.