



Appeal Decision

No site visit made

by Simon N Hand MA

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

Decision date: 25 July 2017

Appeal Ref: APP/D3640/X/16/3162628

2 Red Lion Road, Chobham, Woking Surrey, GU24 8RE

- 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 MB Properties against the decision of Surrey Heath Borough Council.
 - The application Ref 16/0769, dated 5 August 2016, was refused by notice dated 27 October 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 new single storey entrance front porch, double storey rear extension and garage outbuildings 2m from the boundary.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application consists of three elements, a front porch, a rear two storey extension and an enlargement of an existing garage. The porch is no longer required as it seems it has been dealt with by way of a separate planning application. A separate LDC application has also been granted for the rear extension, so the only matter of issue is the garage extension.

Reasons

3. There is no dispute the garage extension should be considered under Class E of the General Permitted Development (England) Order 2015. The only requirement of Class E in dispute is "*E.1(e) the height of the building, enclosure or container would exceed— (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse*". The plans show the side wall of the extension to be exactly 2m from the boundary, the eaves to be 2.4m high and the ridge to be 4m. The edge of the roof overhangs the wall by a small amount and is therefore less than 2m from the boundary. The Council also point out the extension would be likely to have guttering which is not shown on the plan and would encroach further into the 2m gap.

4. None of this is in dispute, what the appellant argues is that the Council have misread the GPDO and they rely on the guidance¹ issued by the government to make their point. When considering Class A, which deals with extensions to dwellings the guidance makes several references to how to take measurements. The appellant points to the advice in paragraph (d) concerning the measurement of the height of the eaves, which says *"eaves height is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope - the overhang should be ignored for the purposes of measurement"*. However, there is no dispute about the height of the eaves, what is of concern is whether they should be counted as encroaching into the 2m gap. Of greater relevance is the part dealing with an enlargement that extends beyond the rear wall of the original dwellinghouse, the guidance says at paragraph (f) *"measurement of the extension beyond the rear wall should be made 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)"*. The appellant points out the LDC for the rear extension showed exactly the same type of measurements as for the garage extension, that is it was 2m from the boundary, and roof overhangs and gutters were ignored for the purposes of measuring the 2m distance by the Council. The appellant argues it is inconsistent to now include them when considering the garage extension.
5. However, I agree with the Council. There is a difference between Class A, which deals with extensions to dwellinghouses and Class E which deals with *"buildings etc incidental to the enjoyment of a dwellinghouse"*. Class E is concerned very specifically with buildings and a building has a rather long definition in article 2 of the GPDO which is helpfully summarised in the guidance as *"Building - includes **any part** of a building and includes any structure or erection, but does not include mechanical plant or machinery or gates, fences, walls, or other means of enclosure"* [my emboldening].
6. The GPDO and the guidance refer to "extensions" in Class A but to "buildings" in Class E. As far as I am aware there is no definition of a dwellinghouse or extension that would help in determining which elements of an extension should be included in any distance measurements and the guidance therefore clearly takes a more relaxed view of what to include in an extension when measuring its distance from a boundary than in the case of a building. There is no specific advice in the guidance for Class E about how to measure the distance between the boundary and a building and no mention of ignoring guttering or an overhanging roof. In fact the guidance is quite clear *"If **any part** of the building, container or enclosure is within two metres of the boundary of the curtilage of the house, then the height limit for the whole development is restricted to 2.5 metres if it is to be permitted development"*. In this appeal the overhanging element of the roof and any guttering are part of the building proposed and it is quite clear that those parts would be closer than 2m to the boundary. Therefore the maximum height of the roof should be 2.5m and in this case the roof is too tall. Consequently the proposed extension to the garage is not permitted development and I shall not issue a certificate.

Simon Hand

Inspector

¹ Permitted development rights for householders - Technical Guidance (2016)