
Appeal Decision

Site visit made on 16 August 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 13 September 2017

Appeal Ref: APP/L5240/X/17/3166472

183 Devonshire Way, Shirley, Croydon, Surrey, CR0 8BZ

- 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 Philip Mitchell against the decision of the Council of the London Borough of Croydon.
 - The application no: 16/03622/LP, dated 14 July 2016, was refused by notice dated 23 August 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Single storey extension to rear of garage/utility area, addition of a conservatory between the new extension and existing kitchen and extension of the boundary wall of the utility area to replace existing fencing.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposal is comprised of three elements, those being an extension to the garage/utility area, a conservatory¹ and a boundary wall. The Council’s description of the proposal (as stated on its decision notice) includes the rear extension and boundary wall but does not expressly refer to the conservatory. The appellant’s description as given on the appeal form includes the extension and conservatory but does not expressly refer to the boundary wall. I shall adopt the description as given by the appellant on the original application form which covers all three elements.
3. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 14 July 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application² which, hereafter, I shall refer to as “the GPDO”. For ease of reading, however, I shall write in the present tense.

¹ In the application drawings only the low wall of the conservatory is shown. The conservatory infills the space between the existing kitchen extension and the proposed garage/utility extension. The application drawings, insofar as the conservatory is concerned, show only the footings and low wall to the front. The appellant has explained that the wall, above its masonry plinth, and roof of the conservatory would be constructed in glass within UPVC frames.

² The GPDO has since been subject to further amendments.

4. 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

5. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

Garage/utility extension and conservatory

6. These two elements of the proposal are interdependent because they share a common wall. I shall, therefore, consider them together.
7. The relevant "permitted development" provisions against which this part of the proposal is to be assessed are those set out in Class A to Part 1 of Schedule 2 to the GPDO³. It is common ground between the parties that the proposal complies with most of the limitations set out in Class A. The Council originally thought that the proposal failed to accord with A.1(i)⁴ as referred to in its decision notice, that being a limitation on the eaves height. However, the Council now accepts that the proposal would comply with that particular limitation. Additionally, the Council agrees that the proposal is less than 4 metres high and therefore accords with A.1(f)(ii)⁵. The only matter that remains in contention, therefore, is whether the proposal accords with limitation A.1(f)(i)⁶.
8. A.1(f)(i) concerns the extent to which a single storey development can extend to the rear. It gives rise to two matters in particular for the appeal. Firstly it raises the question of whether or not the dwelling is detached as an extension of 4 metres is permitted in the case of a detached dwellinghouse whereas the limitation for any other dwellinghouse is 3 metres. Secondly, it raises the issue of what comprised the "original" dwellinghouse⁷. The original dwellinghouse is the baseline against which any enlargement is to be measured.
9. On the first matter the appellant argues that the property is detached and, on that basis, that there is entitlement to a 4 metre extension. The Council, on the other hand, agrees that the property was detached when built but considers it has now become attached to its neighbour at number 181.
10. Whilst there is no definition in Part 1 of "detached dwellinghouse", the interpretation to be given to the term "terrace house" is a dwelling which shares a party wall, or has a main wall which adjoins the main walls of the

³ Class A to Part 1 of Schedule 2 to the GPDO provides for the "enlargement, improvement or other alteration of a dwellinghouse" as permitted development subject to a number of limitations and conditions.

⁴ A.1(i) says that, where the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage, the height of the eaves of the enlarged part is limited to 3 metres.

⁵ A.1(f)(ii) was not cited on the decision notice as a reason for refusal. However, the limitation has been alluded to by the Council in its appeal evidence. It limits the height of a single storey extension to 4 metres.

⁶ A.1(f)(i) says that single storey enlargements should not extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse.

⁷ Article 2, "Interpretation", of the GPDO (in paragraph 2(1)) 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.

dwellings to either side, or to one side where an end of terrace property⁸. If the property is not detached then it probably would be regarded as part of a terrace together with numbers 181 and 179.

11. The appeal property and number 181 each have a garage and utility area to the side, the side facing walls of which are positioned to the boundary and almost abut. The tops of both walls are capped by a single row of copings which span both walls from front to back.
12. From what I saw at my site visit and the other evidence it appears that each of the garages with their utility areas, walls and roofs are separate structures and are not interdependent. Whilst the single skin walls of each are positioned very close together they do not form a party wall. Neither do they actually adjoin in that there is no apparent affixation of the walls one to the other. Whilst a single row of copings sit on top of, and span, both walls it appears these serve an aesthetic rather than any structural purpose. Each garage/utility area has its own structural integrity.
13. The property is one of four properties, detached when built, of very similar design. Notwithstanding the row of copings, structurally it remains separate and its character and appearance remains that of a detached property together with the other similar properties. It is seen, essentially, as a two storey detached house with a single storey side garage/utility area contiguous with the boundary. Notwithstanding the shared copings, I consider the property retains its status as a "detached dwellinghouse" for the purposes of A.1(f)(i) as a matter of fact and degree.
14. Turning to the second issue, the appellant says that the garage was built with the house originally. I agree that this is likely as the other detached properties in the row also have attached garages of similar design. Thus, the original dwellinghouse would have comprised the main two storey living quarters together with the attached single storey side garage, albeit at that time not extending to the full depth of the house.
15. I am told that a utility room extension was built to the rear of the garage in the 1970s bringing its rear wall in alignment with the main rear wall of the dwelling. However, that rear extension was not comprised in the original dwellinghouse.
16. Therefore, the rear elevation of the original dwellinghouse would have been stepped, its walls comprising the main rear wall of the dwellinghouse, the wall of the bay window and the rear facing wall of the garage as originally built. Where the original rear wall of a house is stepped, then each of these walls will form 'the rear wall of the original dwellinghouse' for the purposes of A.1(f)(i)⁹.
17. The proposed development would not extend by more than 4 metres beyond the main rear wall of the dwellinghouse (or the bay window wall) at that part being the conservatory. However, because of the interdependent nature of the garage/utility room extension and conservatory (which share a wall), the

⁸ This interpretation is given in paragraph I of Part 1 of Schedule 2 to the GPDO.

⁹ "Permitted development for householders, Technical Guidance" (published by the Department for Communities and Local Government) provides further explanation although this document has not been referred to by either party.

combined structure would extend by more than 4 metres beyond the original rear wall of the garage. It would, therefore, fail to meet limitation A.1(f)(i) and could not be permitted development.

The boundary wall

18. The proposed boundary wall appears to be a severable element of the overall proposal, i.e. it could exist separately from the rest of the development. It falls to be considered against the limitations of Class A to Part 2 of Schedule 2 to the GPDO. The height limitation for a wall (where not adjacent to the highway) under this provision is 2 metres¹⁰.
19. There is a dimension on the drawing which shows the wall to be of 2010 mm height above damp course although, when measured from ground level, it would be a little higher. The land slopes slightly downwards from the property. The adjoining ground level at 181 is higher.
20. There is no interpretation given in Part 2 of the GPDO as to how height above ground level is to be measured in cases where the adjoining ground level is not uniform. Within the general interpretations of the GPDO¹¹ the height of a building is to be measured from the level of the highest part of the surface of the ground adjacent to it. However the term "building", within these interpretations, does not include any gate, fence, wall or other means of enclosure¹². Therefore, the wall does not benefit from this concession.
21. I acknowledge that there may be some minor height deviations in the case of a wall on uneven land which would not necessarily take the structure as a whole outside of permitted development. However, the drawing does not appear to show how the wall would relate to land gradients specifically or to the adjoining land level at number 181. I cannot, therefore, make a full assessment.
22. On the face of it the given dimension indicates that the wall would exceed the permitted 2 metre limit. In the absence of further information I have to conclude that the case for permitted development rights is unsubstantiated.
23. Whilst there may be a covenant which provides for walls of up to 7 foot height, that is a private legal matter and does not override the need in public law for planning permission.

Other matter

24. Issues have been raised concerning the service given by the Council. However, these are not issues in which I can arbitrate. Neither do they have any bearing upon my decision.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a single storey extension to the rear of the garage/utility

¹⁰ Class A to Part 2 of Schedule 2 to the GPDO sets out permitted development rights for "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure". Under limitation A.1 (b) the height of the wall is limited to 2 metres above ground level.

¹¹ Article 2 of the GPDO, paragraph 2(2), gives interpretation for measuring the height of a building.

¹² Article 2 of the GPDO, paragraph 2(1), gives interpretation (amongst other things) to the term "building" and states that the term does not include walls, fences and other means of enclosure.

area, addition of a conservatory between the new extension and existing kitchen and extension of the boundary wall of the utility area to replace existing fencing was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the Act.

Susan Wraith

INSPECTOR