



Appeal Decision

Site visit made on 27 June 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2019

Appeal Ref: APP/C3620/X/18/3210564

24 Deepdene Gardens, Dorking RH4 2BH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (hereinafter "certificate").
 - The appeal is made by Mr Qing Han against the decision of Mole Valley District Council.
 - The application ref. MO/2018/0844PCL, dated 10 May 2018, was refused by notice dated 6 July 2018.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought was described in the supporting statement to the application as "Erection of detached outbuilding/garage."
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Qing Han against the Council. This application is the subject of a separate decision.

Matters of clarification

3. With the third party representations in mind, I should emphasize that any applicant is entitled to apply for a certificate and has a right of appeal against refusal. However, a certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended. Furthermore, human rights are not engaged in applications and appeals relating to certificates, let alone infringed or violated. Certificates are merely declaratory of certain existing lawful rights.
4. The owner of 22 Deepdene Gardens says that from the submitted drawings, it would appear that part of the application site may well intrude into the title of her property. No further clarification is made on this point. Confusion may have arisen because the annotated measurement lines for the proposed building on the proposed site plan do run over adjacent land, including the rear garden of no. 22. The building itself would not encroach over any boundary.
5. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.

Main issue

6. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

7. The semi-detached bungalow at the appeal site is set well below the level of the adjacent section of the road which ends in a cul-de-sac a short distance to the south. There is a vehicular access and garage at the higher southern end of the garden and a separate pedestrian gate in the roadside fence with a built-in box for any mail that is delivered. The appeal property can also be accessed on foot via a passageway alongside no. 26 (the bungalow adjoining no. 24) off a lower section of Deepdene Gardens. According to the planning history provided by the Council, the appeal bungalow has been extended twice pursuant to planning permissions granted in 1971 and 1980. In contrast, no. 26 seems to be largely unaltered.
8. After removing the existing garage, it is proposed to erect a flat-roofed detached building in the garden to the south of the bungalow to provide a swimming pool and a double garage.
9. The main issue turns on whether the proposed detached outbuilding/garage would have amounted to permitted development at the time of the application.
10. At that time, subject to various limitations, Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permitted the provision within the curtilage of a dwellinghouse of "any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...". It is common ground between the main parties that the building would be within the curtilage of the dwellinghouse and would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.
11. In order to be permitted development, the proposal must meet all the limitations under Class E. If one of them is not satisfied, the proposal would fail to be permitted development. The Council maintains in its decision notice that the proposal would not constitute permitted development as there would be a failure to comply with the limitations in paragraph E.1 (c), (e)(ii) and (f) to Class E. The substantive limitation is arguably at (c) since this concerns the siting of the building and is the focus of the main body of the appellant's appeal statement. The other 2 limitations are concerned with height.
12. Development is not permitted by Class E if:

"(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse".
13. The dispute turns on which elevation forms the principal elevation: for the appellant, the eastern one which faces Deepdene Gardens or for the Council, the southern one which faces towards the existing garage and vehicular access. I have had regard to the *Permitted development rights for householders Technical Guidance* (TG) published in April 2017, in particular the section headed *General issues* where there is a definition of the word "Original" and clarification about what is meant by the term "Principal elevation".

14. I understand here that the original dwellinghouse will be as it existed on 1 July 1948, before the first of the extensions was added. The TG says that in most cases the principal elevation will be that part of the house which fronts the main highway serving the house. It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation. The TG is for guidance purposes only, and the use of words such as "*in most cases*" and "*usually*" demonstrates that it cannot be conclusive.
15. Having regard to where the onus of proof lies, the appellant's case is weakened by the fact that neither the supporting statement for the application nor the appeal statement attempt to properly grapple with the matter of the original dwellinghouse. The officer's delegated report shows that the Council interrogated the plans from 1971 and 1980. In particular, the Council found that the plans from 1971 showed that the existing dwelling then had a bay window and an external door in the southern elevation. The door was said to lead directly into a hallway that ran through the dwelling. It can therefore be fairly held to have been the main entrance door. The appellant's written submissions do not paint an alternative scenario about the original dwelling.
16. The appellant's claim that "...the front door together with the main architectural features are those facing the road" did not tally with what I saw on my site inspection. In the extended building on site, I saw that the eastern elevation facing the road contains windows to a bedroom, a bathroom, a link room and a kitchen. That elevation does not contain a door. There is only a kitchen (back) door in the north-facing wing of the kitchen extension. With the main external drainage features also being present, the eastern elevation has the character of a side elevation.
17. On the other hand, the southern elevation now contains, apart from another kitchen window, the one large window serving the lounge (the principal room in the bungalow) and an entrance door to a lobby behind. This window and door are the main architectural features of the dwelling and provide for the impression of a front aspect to the dwelling and the living arrangements, in all probability as a rough continuation of the original design and layout. There is a remaining section of hallway in the bungalow running in a north-south direction. The eastern elevation lacks the weight and substance that the lounge window and the entrance door give to the southern elevation.
18. I lay some importance on how people, in vehicles and on foot, might approach the dwelling. Vehicles can pull into the garage or draw up on a surfaced area in front of it. Both those features are in front of the southern elevation. This upper part of the garden is the only part of the land in clear public view, admittedly when the vehicular gates are left in an open position. Once parked inside the site, residents or visitors are likely to approach the dwelling through the garden on the southern side. Given the location of the town centre, the cul-de-sac end to Deepdene Gardens and the sharp changes in level inside the garden and along Deepdene Gardens next to the garden, I consider that people on foot are likely to favour the side passageway next to no. 26 rather than the pedestrian gate in the roadside fencing. This passageway provides a quicker and comparatively level approach and the first entrance door one encounters on this route is the door on the southern elevation. The gate in the roadside

fencing is barely distinguishable from the fencing. I note that mail seems to be placed in the box there rather than being taken down the steps inside the site.

19. I attach some weight to the design and layout of the semi-detached pair of dwellings at nos 24 and 26. The Council describes them aptly as being "...joined back to back and not in the conventional way." There is a strong case for the northern elevation on no. 26 being the principal elevation of that original dwellinghouse given the inclusion of 2 large bay windows and the access arrangements, regardless of where the main entrance door was originally located. The plots on which these dwellings stand are quite narrow east to west with the available land on the eastern side rising sharply up to the roadside boundaries. This made the northern elevation in the case of no. 26 and the southern elevation in the case of no. 24 the logical principal elevations with the best aspects and outlooks. The southern elevation of no. 24 cannot be described as containing a side door or as the side elevation as the appellant seeks to do.
20. Drawing these threads together, as a matter of fact and degree, I find that the principal elevation of the original dwellinghouse at 24 Deepdene Gardens is its southern elevation and thus that the proposed detached outbuilding/garage would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. In the light of the above and having taken into account all other matters raised, I find on the balance of probabilities that the proposed detached outbuilding/garage would not be permitted development as there would be conflict with the limitation in paragraph E.1 (c) to Class E. If I reached that view, the main parties were in agreement at the site visit that it would then be superfluous for me to comment on the matters concerning height. That is the approach I have decided to adopt.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR