



Appeal Decision

Site visit made on 2 October 2019

by B M Campbell BA(Hons) MRTPI

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

Decision date: 7 October 2019

Appeal Ref: APP/T0355/X/18/3217458

Mare's Nest, 91 Cheapside Road, Ascot SL5 7QG

- 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 Ms B Littleboy against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/01832, dated 12 June 2018, was refused by notice dated 14 August 2018.
 - 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 described as "proposed single-storey extension to existing outbuilding, with overall height not exceeding 2.5m above ground level"
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Decision

1. The appeal is dismissed.

Reasons

2. The application was made under s192 of the Act which enables an application for a LDC to be made for operations proposed to be carried out. In this instance, my understanding is that the extension to the outbuilding had already been erected when the application was made, albeit that the intention was to alter the pitched roof to a flat one. That being the case, the operation was not "proposed" and s192 is not the appropriate section of the Act – the extension for which a certificate is sought had already been built albeit that an alteration to its roof was proposed.
3. Notwithstanding the above, permitted development rights only apply when the development fully accords with the limitations set out in the Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). If development is commenced but any limitation is exceeded, then the whole development is unlawful, and not just the element in excess of those rights. In addition, permitted development rights cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance.
4. In this case, it is acknowledged that the extension as originally constructed with a pitched roof failed to meet limitation E.1(e)(ii) of Class E of Part I of Schedule 2 to the GPDO which limits the height of a building within 2m of the boundary to 2.5m. That being the case, the whole of the extension was

unlawful and was not permitted by way of Class E. Subsequent alterations to the building would not change that situation since the time to consider whether a development benefits from the permission granted by the GPDO is when it is constructed.

5. The matter in dispute between the parties regarding whether it was the extension only or the whole of the resulting building that was subject to the limitations of Class E is, therefore, academic in this instance since it is accepted that the extension, when constructed with a pitched roof, did not comply with the height limitation.
6. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed single-storey extension to an existing outbuilding, with overall height not exceeding 2.5m above ground level at Mare's Nest, 91 Cheapside Road, Ascot SL5 7QG was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

B M Campbell

Inspector