



Appeal Decision

Site visit made on 10 March 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/G4240/X/19/3231687

15 Beechwood Drive, Mossley OL5 0QJ

- 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 Mr Graham Hutchinson against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 19/00250/CPUD, dated 21 March 2019, was refused by notice dated 9 May 2019.
 - 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 to refurbish and expand the existing decking.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class A or Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. The appellant argues that the proposal falls within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) which permits the provision within the curtilage of a dwellinghouse any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. This is subject to restrictions.
4. There is no dispute between the main parties that the development covers less than 50% of the total area of the curtilage. The appellant contends that subject to the height limitation of 0.3 metres and other limitations and conditions under Class E the garden decking is permitted development. I closely inspected the proposal and existing decking at my site visit and am satisfied that it is not a raised platform in that it is less than 0.3 metres in height above the level of the highest part of the surface of the ground adjacent to it. I do not accept that the proposal falls to be considered under Class E.

5. *Permitted development rights for householders – Technical Guidance September 2019 (Technical Guidance)* states that buildings which are attached to a dwellinghouse are permitted under Class A rather than Class E. The proposal would be a substantial structure incorporating a large steel frame, support columns and balustrade and, as such, is a building. The appellant has clarified that the steel structure is attached to the brickwork of the dwelling and also accepts that the area of new decking would 'combine' with the original decking which is attached to the dwelling. Consequently, the development the subject of the certificate is to be considered under Class A which relates to '*the enlargement, improvement or alteration of a dwellinghouse*'.
6. The appellant contends that the proposal could not be described as a single storey extension, but Class A clearly relates to a far wider definition that 'extensions' and includes any enlargement, improvement or alteration to a dwellinghouse. The proposal would not be permitted by part (f) of Class A because it has a single storey and extends beyond the rear wall of the original dwellinghouse by more than 4 metres. Therefore, the refurbishment and expansion of the deck requires planning permission.
7. In addition, the development fails to comply with part (k) of Class A and part (h) of Class E because it consists of or includes the construction or provision of a verandah or balcony. Technical Guidance states that a verandah is a gallery, platform or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level. A balcony is understood to be a platform with a rail, balustrade or parapet projecting from outside the upper floor of a building. The advice in the Technical Guidance clearly gives scope for a wider interpretation of definitions by using words such as 'usually' and 'is understood to be'. Therefore, in my opinion the proposal may be described in some way as either a verandah or a balcony. Both are fatal to whether the proposal is lawful under the terms of the GPDO.
8. I have taken account of other decisions to which my attention has been drawn. Whilst I can see that they are of relevance to the current appeal, I have considered the current appeal proposal on the specific circumstances of the appeal site and the proposal presented. I have also noted the appellant's comments with respect to a privacy complaint; however, in a case such as this there is no scope to consider particular planning merits, but rather whether or not the Council's decision to refuse to issue the lawful development certificate was reasonable.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the proposal to refurbish and expand the existing decking was well-founded and the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal Decision

10. The appeal is dismissed.

A A Phillips

INSPECTOR