
Appeal Decision

Site visit made on 14 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/Y3615/X/19/3239075

Basie Cottage, 24 Roseacre Gardens, Chilworth, Surrey GU4 8RQ

- 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 K Syed against the decision of Guildford Borough Council.
 - The application Ref 19/P/01099, dated 18 June 2019, was refused by notice dated 28 August 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 reposition of door and new roof to bungalow porch.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address from the application but added the house name for clarity as this was included on the appeal form.
3. I saw on my site visit that the property does not reflect the details shown on the drawings submitted with the application. In particular, the roof above the front door has been altered so that it is hipped rather than gabled as shown on the drawings, and a large open sided porch has been added, as shown on the submitted photographs. The works as built do not therefore clearly reflect the proposal shown on the submitted plans. However, it is clear that the appellant is seeking a certificate of lawfulness for what has been built, and I will deal with the appeal on that basis.

Reasons

4. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The appellant must show, on the balance of probabilities, that the development proposed would be lawful. The planning merits of the development are not therefore relevant in this case. The appellant has not explained why he considers that planning permission is not required for the works shown on the proposed drawings or the work that has been completed on site.

5. The Council refused to issue the certificate for two reasons. Firstly, the submitted plans do not reflect the configuration of the property on site; and secondly, permitted development rights for works within Class A Part 1 Schedule 2 of the GPDO¹ have been removed through planning permission granted under reference 15/P/01759.
6. Article 3(5) of the GPDO provides that the planning permissions granted by Schedule 2 do not apply if the building operation is unlawful. It follows that permitted development rights granted in respect of a building shall not apply if the operations involved in the construction of any part of that building are unlawful. The appellant states that all the previous extensions that have been carried out have been done with planning permission. However, the submitted drawings do not reflect what has been built on site, and there is insufficient evidence to demonstrate that all parts of the building are lawful.
7. There are permitted development rights for porches under Class D Part 1 Schedule 2 of the GPDO. However, I have seen no evidence that either the works shown on the drawings or the porch and roof alteration that have been built would comply with the limitations set out in Paragraph D.1, namely that the ground area does not exceed three square metres and no part of the structure is more than three metres above ground levels. Moreover, as Class A rights have been removed, the work to reposition the front door requires planning permission, and Class D rights to build a porch outside the front door are not available.
8. The works that have been carried out therefore do not benefit from any permitted development rights and planning permission is required. Even if I made my decision on the basis of the works shown on the submitted drawings the appeal would not succeed.
9. I acknowledge that the appellant was not aware that planning permission was required for the porch, and that he considers that it has not had a harmful effect on the property or surrounding properties. However, these are not matters that affect my consideration of the appeal.
10. Very limited evidence has been submitted in support of the appellant's case, and it is far from being precise and unambiguous. The appellant's evidence is not sufficient to demonstrate, on the balance of probabilities, that the works are lawful. It therefore falls well short of discharging the burden of proof.
11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the works to reposition the door and new roof to bungalow porch was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

N Thomas

INSPECTOR

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended