



Appeal Decision

Site visit made on 22 July 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2020

Appeal Ref: APP/D1780/X/19/3231680

20 Willow Tree Walk, Southampton SO19 8SL

- 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 & Mrs Robinson against the decision of Southampton City Council.
 - The application Ref 18/02315/PLDC, dated 21 December 2018, was refused by notice dated 13 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 development is sought is proposed roof to garage.
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Summary of Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a certificate of lawfulness for a proposed roof to garage is well founded having particular regard to the resultant height of the building.

Reasons

3. In cases such as this the onus is on the appellants to demonstrate, on the balance of probabilities, that the proposed roof to garage would be permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).
4. The existing garage is a detached flat roofed building located in close proximity of two boundaries. The dispute between the parties centres on whether the proposed roof would cause the garage to exceed 2.5m in height above the highest ground level.
5. I could see during my site visit that the land surrounding the garage is of variable height with the rear of the building built into a slope. The Government's Technical Guidance¹ states that the '*...height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure or container to its highest point.*'

¹ MHCLG Permitted development rights for householders Technical Guidance, September 2019

6. To this effect the appellants assert that the height of the building would be less than 2.5m above the highest immediate ground level, which is situated at the rear of the building. The plans originally submitted to the Council have then been annotated by hand with a figure of 2.5m. The Council have electronically scaled the originally submitted plans and consider the height would be between 2.66m and 2.84m.
7. Aside from the appellant's assertion, there is very little evidence concerning any detailed assessment of the ground levels immediately adjacent to the existing garage. The plans do annotate with a dotted straight line a neighbouring fence to the rear, showing the ridge level of the proposal being below this. However, the height of the fence has not been provided and I could see during my site visit that it is not of uniform height, as is otherwise indicated by the plans.
8. Therefore, I am not satisfied that it has been demonstrated on the balance of probabilities that the proposed roof to garage would be permitted development. The evidence of the Council relating to the electronic scaling of the proposed height also casts further doubt in my mind that the proposal would be permitted development.
9. Whilst there is no requirement within the GPDO for the proposal to be finished in materials to match the existing dwelling, for the above reasons the appellants have not satisfactorily discharged the burden of proof that the proposal would be permitted development for the purposes of the GPDO, having particular regard to the resultant height of the building, to enable a certificate of lawfulness to be granted.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development 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.
11. The appeal is dismissed.

Paul T Hocking

INSPECTOR