



Appeal Decision

Site visit made on 25 August 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 28 August 2020

Appeal Ref: APP/X1545/D/20/3248949

'Calma', Summerhill, Althorne CM3 6BY

- 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 Paul Evan against the decision of Maldon District Council.
 - The application ref. LDP/MAL/19/01332, dated 23 December 2019, was refused by notice dated 28 February 2020.
 - 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 construction of a rear extension to an existing dwellinghouse that complies with the parameters of the GPDO.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Reasons

3. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the proposed outbuilding would be permitted development under the provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
4. The Council took their decision on the basis of the submitted drawings of the proposed extension, and I have considered this appeal in the same way. However, the rear extension has now been substantially completed and is in use. I have therefore also given subsidiary consideration to the development as built.
5. Class A of Part 1 to Schedule 2 permits the enlargement, improvement or other alteration of a dwellinghouse. This allowance is subject to a number of preclusions and conditions. Those relevant to this case are under paragraph A.1

with respect to preclusions, and under paragraph A.3 with respect to conditions.

6. The Council examined the application against these criteria and found that all were satisfied with the exception of A.1(d) – that is, development is not permitted if:
The height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.
The application was refused on this ground.
7. The appeal has been made on the basis that the flat roof of the extension as shown on the application drawings would not exceed the height of the eaves of the existing dwellinghouse.
8. The MHCLG document 'Permitted Development Rights for Householders - Technical Guidance' of September 2019 (the Guidance) advises that:
For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.
9. With regard to flat roofs the Guidance goes on to say:
Eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof - the overhang and the parapet wall should be ignored for the purposes of measurement.
10. The application drawings show the eaves height to be 2700mm above external ground level. The height shown for the flat roof is also shown to be 2700mm above external ground level. However, this latter dimension is taken to the bottom of the parapet gutter. I find this somewhat misleading, since the gutter cannot reasonably be seen as '*the upper surface of the flat roof*'. I take upper surface to mean the surface proper rather than a gutter that is by definition at a lower level than the upper surface.
11. It is apparent that if the surface of the flat roof were to be projected to the rear face of the parapet along the back wall of the extension this dimension would be above the eaves level by approximately the depth of the gutter. This depth is difficult to judge. However, the gutter is shown to take up a significant proportion of the constructional depth of the roof, and the cross-sectional drawings clearly show the flat roof as a whole to be above the stated height. I consider the Council's estimate of the flat roof height to be about 0.1 of a metre above the existing eaves is realistic.
12. I note that the relevant diagram in the Guidance illustrates an entirely flat roof with no falls, and there is no reference to the slope, whereas in practice domestic flat roofs are most commonly laid to falls. In this case the flat roof surface would meet the parapet at its lowest along the back wall of the extension, whereas it would rise along the two flank walls.

13. It is apparent from the drawings that given the fall, the flat roof surface at its highest would be at about the same level as the underside of the parapet coping. Assuming the parapet coping would be about 75mm thick, the roof surface at its highest would be approximately 2925mm above ground level – very considerably higher than the existing eaves. I therefore find that both the proposed minimum and maximum heights of the flat roof would as a matter of fact and degree be significantly above the existing eaves level. In considering the proposal I conclude that on the balance of probabilities the Council's decision was well-founded.
14. Although the rear extension is substantially complete, I saw that the parapet coping has not yet been put in place. At the site visit the dimension from the paving outside the new extension to the top of the external brickwork was seen to be 2920mm. Using the top of the brickwork as a datum, the flat roof at the lowest point of its fall is 240mm below datum, and at the highest point, where the flat roof meets the original roof, is 190mm below datum. The eaves level – measured as defined in the Technical Guidance – is 350mm below datum. Irrespective of the height above ground level, these measurements indicate that the flat roof is a minimum of 110mm and a maximum of 160mm above the existing eaves level. It is therefore precluded from being permitted development.
15. In summary, I consider that on the balance of probabilities the proposed extension would not have complied with the provisions of Class A of Part 1 to Schedule 2 of the GPDO. Furthermore, had this application been made for an LDC for existing development under s.191(1)(b) of the Act, that too would have failed.

Conclusions

16. 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 construction of a rear extension to an existing dwellinghouse that complies with the parameters of the GPDO at 'Calma', Summerhill, Althorne CM3 6BY 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.

Stephen Brown

INSPECTOR