



Appeal Decision

Site visit made on 11 August 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/Q3630/X/19/3230998

62 Alexandra Road, Addlestone, Kent KT15 2PE

- 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 G Walsh against the decision of Runnymede Borough Council.
 - The application Ref: RU.18/1688, dated 26 October 2018, was refused by notice dated 16 December 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 'Scaffolding will be erected within the property ground for access for the works to be carried out. We are creating an opening to the front of the property for access during the works. A new structural floor will be installed and a dormer will be created to the rear, and to the rear addition. We will be installing a staircase within the property for access to the new bedroom and bathroom¹.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development within the application form at section 4 is set out above. The plans show, and the Council describe the application for, an 'L' shaped rear dormer and the appellant in the appeal form section E describes the development as Proposed LDC to establish whether planning permission is required for an 'L' shaped rear dormer.

Main Issue

3. The main issue is whether at the time of the LDC application the proposed development would have constituted permitted development by virtue of Article 3 Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

4. In any application for an LDC the burden of proof is on the applicant to demonstrate on the balance of probabilities that the proposal would have been lawful on the date of the application.

¹ The description listed is that set out in section 4 of the Description of Proposal on the application form. There is no power under section 192 of the Act for the Council or an Inspector to change the description of development.

5. The application for an LDC was made on the basis that express planning permission for the development was not required since planning permission is granted by Article 3 of the GPDO. Article 3 grants planning permission for classes of development described as permitted development in Schedule 2 of the Order. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class B of part 1 specifically deals with enlargements consisting of additions or alterations to the roof. It is the appellant's case that the development falls within this class, meeting all the specified limitations and conditions, and so is permitted development.
6. I note that roof lights are proposed in the front elevation of the property, and whilst not referred to in the application as complying with Class C of Part 1 of Schedule 2 of the GPDO, they are shown on the submitted plans and referred to by both parties.

Class B

7. The main matters in contention are whether the conditions B.2(b)(i) (aa) and (bb), B.2(ii) and B.2(c)(i) and (ii) and Class C are met.

B.2 (b)(i) (aa) and (bb)

- (i) **other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—**
 - (aa) the eaves of the original roof are maintained or reinstated; and
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves;
 - (ii) **other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension**, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse;
8. Condition B.2.(b) has two exceptions for the application of condition (i) and one exception for condition (ii). In particular the conditions in both (i) and (ii) do not apply to an enlargement which joins the original roof to the rear or side extensions. Both the appellant and the Council accept that what is proposed is an 'L' shaped dormer and both accept that the outrigger is part of the original house.
 9. The 'L' shaped dormer proposed is one single enlargement flowing from the main roof to the roof of the outrigger. It clearly joins the main roof of the house to the roof of the outrigger.
 10. Many outriggers or rear wings on houses are original i.e. constructed at the same time as the main dwelling. It is often the case that such subsidiary rear wings/outriggers are referred to as rear extensions. This is supported in the Government guidance document entitled *Permitted development rights for house holders – Technical Guidance*² (September 2019) (TG), which in relation to Conditions B.2 (b) (i) and (ii), states:

"The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on the main roof and 'outrigger' or 'back addition' roof) whether the part of the house being extended forms part of the original house or is an enlargement, or the

² This guidance provides an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances.

shape or level of the pitch of the roofs are different in relation to each other.”

The TG therefore describes a house’s rear projection or outrigger as falling within the meaning of extension, whether original or not.

11. The Council considers that there is a degree of discrepancy between the text above in the TG and conditions in the GPDO. In its view the TG does not override the need for a proposal to comply with the GPDO and does not cover all circumstances that may arise.
12. The TG provides guidance directly relevant to this appeal. It is not an unusual dwelling in that there is a main two storey element and a subsidiary rear projection which I have called an outrigger. The TG is an aid to interpretation and application of Part 1 of Schedule 2 of the GPDO. Where it covers the circumstances of a case, as it does in this appeal, it should be followed, unless it is overturned by the Courts or it can be demonstrated to not address the circumstances of a particular case or apply to the particular facts of a case. In my view, the TG does apply to the particular facts of this case.
13. As such, neither condition (b)(i) or (ii) are relevant to the proposal as the development is one of the exceptions to the condition. Therefore, the proposal is not in breach of these conditions.

Condition B.2.(c)(i) and (ii)

(c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be—

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.’

14. The submitted plans (drwg no A04, A05 and A06) provide notes and show a window on the flank elevation of the proposed enlargement which is divided into two panes. Drwg nos A04 and A05 do not indicate that the window, which has an upper and lower part is either non-opening or that the part that can be opened is more than 1.7m above the floor level of the en-suite. Drwg no.A06 contains various notes and one states that the shower room is to have frosted glass in the lower pane, and it records that unless otherwise stated all new glazing shall be clear. This would fail to comply with the condition to require it to be **all** obscurely glazed or non-opening/openable only above 1.7m from the floor of the en-suite. This is contrary to Condition B.2.(c)(i).
15. The appellant states within the appeal submissions that the window would be obscure glazed and non-opening. However, this is not supported within the submissions made at the time of the application for the LDC.
16. An LDC if issued would confirm what is shown on the plans and contained in the application is lawful. It therefore has to be clear on its face that what was before the Council complies with the limitations and conditions of the relevant class of development in the GPDO. The appeal application is not clear on its face. I therefore find that the proposed development would be contrary to Condition B.2.(c)(i) and it is not clear that it would meet the requirements of Conditions B.2.(c)(ii) on the evidence contained in the application submission.

Class C

17. The proposal includes two roof lights on the front roof slope. This part of the roof is proposed to be unchanged other than the insertion of the roof lights.

18. Class C (b) limits any protrusion from the roof to 0.15m. There is no note or dimension on drwg no A04, A05 or A06 to confirm the amount the roof lights would protrude from the roof. A note on drwg no A04 and A05 states 'New Velux Skylights size and position to be confirmed on site by client and subject to site constraints'.
19. The Council considers that because the roof lights are required for the loft conversion and that development relies on the 'L' shaped dormer and is part of the wider development. Reliance is placed on the findings by another Inspector in appeal reference APP/N5660/X/17/3184131 who found that the roof lights and windows proposed were integral to the proposed development and form part of the same development which comprised an 'L' shaped dormer with the roof lights to the front roof slope. He found other elements of the proposal failed to comply with the conditions and limitations of the GPDO and therefore the proposal was not lawful.
20. While there is a scale drawn on the plan, I cannot accurately measure the protrusion from the roof slope to confirm it would protrude no more than 0.15m at a drawing with a scale of 1:100. In the light of the fact I have found that 'L' shaped dormer would fail to comply with limitations in Class B no purpose would be served to clarify this point with the parties.
21. The TG requires that when considering whether a development proposal is permitted development all the relevant Parts of the Order and all the Classes within those Parts need to be taken into account. In order for a proposal to be permitted development a proposal must meet all the limitations and conditions under each Class relevant to the proposal. The description of development that the LDC is sought is for the whole development and therefore as I have found that the 'L' shaped dormer does not meet all the limitations and conditions of Class B an LDC for the front roof lights could not be issued.

Other matters

22. The Council have referred to a number of appeal decisions. It is clear that Inspectors have considered the issue of rear outriggers differently over time. On the basis of the guidance contained in the current TG issued in September 2019 and the evidence before me, I have concluded that the rear outrigger is for the purposes of interpretation of Class B of Part 1 of Schedule 2 of the GPDO an extension to which the exceptions apply.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Scaffolding will be erected within the property ground for access for the works to be carried out. We are creating an opening to the front of the property for access during the works. A new structural floor will be installed and a dormer will be created to the rear, and to the rear addition. We will be installing a staircase within the property for access to the new bedroom and bathroom' 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.

Hilda Higenbottam

Inspector