



## Appeal Decision

Site visit made on 17 November 2020 by G Sibley MPLAN MRTPI

**Decision by Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 January 2021

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**Appeal Ref: APP/P0430/D/20/3256030**

**86 Westbrook End, Newton Longville MK17 0BX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Kevin Dee against the decision of Buckinghamshire Council.
  - The application Ref: 20/01693/HPDE, dated 27 May 2020, was refused by notice dated 14 July 2020.
  - The development proposed is the erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 6m, for which the maximum height would be 4m, and for which the height of the eaves would be 4m.
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### Decision

1. The appeal is dismissed.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Procedural Matter

3. The description of development in the original application form is a descriptive explanation of the position rather than an identification of the operational development. In the interest of clarity, I have considered the proposals on the basis of the description of development taken from the Decision Notice.

### Main Issue

- Whether the development would be permitted development under Schedule 2, Part 1, Class A of the GPDO.

### Reasons

4. Where an application is made for a determination as to whether prior approval is required for development which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g) to Part 1, paragraph A.4(3) provides that the Local Planning Authority (LPA) may refuse the application where it considers that the proposed development does not comply – or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development (PD).

5. Permitted development rights granted through the GPDO are subject to a number of conditions and limitations, including those set out at paragraph A.4 of Part 1, Class A, of Schedule 2. Paragraph A.4(2) identifies the information that must be submitted with an application for prior approval in order to make it valid. The appellant has not questioned the date the application was validated by the Council, so the inference is that the information required by subparagraph 2 was provided on the 2<sup>nd</sup> June.
6. Paragraph A.4(10) states that development must not begin before the occurrence of a number of the matters. Of those, paragraph A.4(10)(c) states the development must not begin before the expiry of 42 days following the date on which the information referred to in paragraph A.4(2) was received by the LPA without the LPA notifying the developer as to whether prior approval is given or refused. The expiry of 42 days following the 2<sup>nd</sup> June is the 14<sup>th</sup> July. Provided that the appellant received the decision on the 14<sup>th</sup> July prior to the end of the working day (17:30) then the Council notified the appellant within the statutory period. The exact time the decision was issued was not provided but based on the available evidence, the decision was issued within the statutory period. Thus, I am satisfied that the Council's decision was issued within the correct timeframe.
7. Under paragraphs A.4(10) (a) and (b) development must not commence until either the LPA has notified the applicant that prior approval is not required or, where it is required, giving written notice of their prior approval. In effect those requirements are pre-conditions and development will not benefit from permitted development rights if those conditions are not met and work is commenced before such confirmation has been given. Construction of the extension, as shown on the submitted plans, has already started and the work was almost been complete at the time of the site visit. Given that it is a pre-requisite that prior approval is granted before work commences, it is not possible for prior approval to be granted retrospectively through this appeal.
8. It follows not only that prior approval is not deemed to be granted, but also that prior approval cannot be granted. The appeal could be dismissed simply on the basis that the development has been commenced. However, I also note that the Council have refused the application on the basis that the extension would exceed the limitations to PD set out in paragraph A.1.
9. The original dwellinghouse is defined in the GPDO as the house as it existed on 1<sup>st</sup> July 1948 or if built after this date, how it was originally built. Because the development has already taken place it is not possible to confirm the dimensions of the original dwellinghouse. Based on the attached neighbouring dwelling the original dwellinghouse would have included the central two storey element of the house and the two storey rear outrigger but not the single storey conservatory that was located within the small courtyard formed behind the rear wall of the dwelling and the side wall of the rear outrigger. The original dwellinghouse does not include the converted shop that is connected to the flank wall of the dwelling, as it was only recently granted planning permission to convert into residential use (Ref:18/03715/APP) and as such it was not part of house when it was originally built.
10. Where the enlarged part of the extension would extend beyond a wall forming a side elevation of the original dwellinghouse, a proposal must meet all of the limitations in A.1(j)(i) to (iii) in order to constitute PD. One of these limitations

states that an extension would not be PD where it would extend beyond the side wall of the original dwellinghouse and would have a greater width than half the width of the original dwellinghouse. The Technical Guidance<sup>1</sup> indicates that a wall forming a side elevation will be any that cannot be identified as being a front wall or a rear wall. The side wall of the rear outrigger cannot be identified as a front or rear wall and therefore, is a side wall. Consequently, the extension extends beyond the side elevation of the rear outrigger and would have a greater width than half the width of the original dwellinghouse.

11. The side wall of the rear outrigger, on the ground floor, has been demolished as part of the works to the dwelling. Nonetheless, the side wall of the outrigger still counts as part of the original dwellinghouse, even though it has been demolished.
12. The approved conversion of the neighbouring shop has been subsumed by the dwelling, with the floor plan (Dwg.no: 942-PL-030) showing an internal door between the two elements of the building and as such, is an enlargement to the original dwellinghouse. Subsection (ja) notes that the enlarged part of the dwellinghouse must be considered together with any existing enlargements which, in this instance, includes the converted shop. Consequently, if the conservatory was part of the original dwellinghouse, the enlarged part of the dwellinghouse, including the converted shop extended beyond a side wall of the original dwellinghouse and is greater than half the width of the original dwellinghouse.
13. The combined extensions are single storey and whilst a Juliette balcony has been installed on the first floor as part of the works, it does not extend far enough beyond the rear wall of the dwelling to constitute as an enlargement to the dwellinghouse over more than a single storey. Furthermore, based on the available information the extensions do not appear to exceed 4 metres in height. Nevertheless, the development does not comply with the limitations set out in A.1 (j)(iii) as well as (ja). Consequently, setting aside the issue relating to the commencement of work and the dispute over whether the Council issued the decision notice within the correct timeframe, the development does not constitute permitted development under Schedule 2, Part 1, Class A of the GPDO.

### **Other Matters**

14. Whilst I note appellant was disappointed with the prior approval process and the advice provided by the Council, I have not been provided with a copy of the advice that was given and the Council's decision was based on the limited requirements of the GPDO and not the planning judgement of the Officer. The reasons for needing the larger extension cannot be taken into consideration as part of this process, unlike a full planning application where the Officer could apply their own judgement to weigh up the benefits of the proposal against any identified harms.
15. I also note that no objections were received from neighbouring residents in relation to consultation on the prior approval application. However, the absence of objections does not have a bearing on whether the development amounts to permitted development, having regard to the findings above. It is clear that an application for planning permission would need to be made for the

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<sup>1</sup> Technical Guidance: Permitted Development for Householders (Published 2017) page 23

development. That would be the appropriate forum for considering the planning merits of the scheme and I make no comment in that regard.

**Conclusion and Recommendation**

16. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

*G Sibley*

APPEAL PLANNING OFFICER

**Inspector's Decision**

17. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

*Chris Preston*

INSPECTOR