



Appeal Decision

Site visit made on 9 March 2021

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 22 March 2021

Appeal Ref: APP/D3640/X/20/3256938

41 Mincing Lane, Chobham, Surrey GU24 8RS

- 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 Mrs Kim Leaver against the decision of Surrey Heath Borough Council.
 - The application Ref 20/0287/CES, dated 12 March 2020, was refused by notice dated 7 May 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 described as "*Proposed single storey side/rear extension meets the allowances of General Permitted Development Order - Class A. Length = 4m from original rear wall. Width = 3.33m, not more than half the original dwelling's width of 7.77m. Height = 4m, No higher than 4m.*"
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have noted the appellant's reasons why she wishes to extend her home. However, an application under s192(1)(b) of the Act¹ seeks to ascertain whether the proposed operations would be lawful. Such applications are determined on the basis of fact and law, and this means that the personal circumstances of the appellant can form no part of my assessment as to whether a LDC should be granted.
3. In a LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would have been lawful at the time of the application.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue the LDC was well-founded. That turns on whether the proposed extension would be permitted development under the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO).

¹ The Town and Country Planning Act 1990 as amended

Reasons

5. Article 3 and Schedule 2, Part 1, Class A of the GPDO grant planning permission for the enlargement, improvement or other alteration of a dwellinghouse - subject to limitations and conditions.
6. The Council refused the LDC on the basis that the proposed extension would fail to meet the limitations of Part 1, paragraph A.1(e)(ii), which states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse. It is undisputed, and I agree, that the proposal would meet all other limitations and conditions of Part 1, Class A.
7. The Government's Technical Guidance² explains that the extent to which an elevation of a house fronts a highway will depend on factors such as the distance and angle between the elevation of the house and the highway.
8. This appeal relates to an extended, two storey detached dwelling house, the principal elevation of which faces to the south. The eastern side elevation therefore faces towards the highway and although not quite parallel to it, the angle is not significant.
9. Whilst there is a double garage in the area between the side of the house and the highway, the extension would be positioned where the depth of the house runs beyond the depth of the garage. Consequently, the garage does not amount to an intervening feature between that part of the elevation of the house and the highway. Rather, the intervening feature at that point is a hardstanding which effectively channels views towards the part of the elevation which would be enlarged, creating an obvious and direct visual relationship with the highway. The distance does not appear substantial and the intervening area clearly appears to form part of the same residential property.
10. The Technical Guidance explains that, 'extend beyond a wall' comprises not only the area immediately in front of the wall, but also an area in front of a line drawn from the end of the wall to the boundary of the property. In this regard, I appreciate that the side of the extension would align with the main eastern side elevation wall (to the lounge and stairs) and consequently would not extend beyond a line drawn from the end of the wall to the northern boundary of the property.
11. However, the Technical Guidance also explains that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall and that houses will often have more than two side elevation walls. That is applicable in this case because the side elevation facing the highway is stepped and the proposal would be positioned beyond the side wall to the boiler room.
12. Consequently, the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse.
13. I therefore find that the appellant has not demonstrated either that the proposed extension would not require planning permission, or that it has been

² Ministry of Housing, Communities & Local Government – Permitted development rights for householders – Technical Guidance – September 2019

granted planning permission by the GPDO. On the evidence before me and the balance of probabilities, the extension would breach the limitations set out in paragraph A.1(e)(ii) to Part 1, Class A of the GPDO.

14. Accordingly, I conclude that the Council's refusal to grant a LDC was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the Act.

Richard S Jones

INSPECTOR