



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2021

Appeal Ref: APP/V1260/X/21/3269318
10 Burley Road, Poole BH12 3DA

- 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 and Mrs Michelmores against the decision of Bournemouth, Christchurch and Poole Council.
- The application Ref APP/20/01450/K, dated 9 December 2020, was refused by notice dated 3 February 2021.
- 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 an extension.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Main Issue

2. The main issue in this appeal is whether it has been shown that the proposed extension is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class A.

Reasons

3. It is for the appellants to show that an LDC should be issued for the extension, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a detached chalet bungalow. The extension would be at the rear of the dwelling. According to the submitted drawings, the extension would protrude around 3.4 m from the rear elevation of the dwelling and it would have an overall height of around 3 m above ground level.
5. The GPDO at Article 3, Schedule 2, Part 1, Class A grants planning permission to extend a dwelling where the relevant size and locational limitations in paragraphs A.1 and A.2 of that Class are met. Furthermore, the conditions at paragraph A.3 must be complied with where relevant. The Council did not dispute that the extension would meet the relevant limitations in paragraph A.1

- (b), (c), (e), (f) and (i) and that the 'similar materials' condition in paragraph A.3 (a) would be complied with. They also agreed that the dwelling was not situated in an area where paragraph A.2 applied. I found no reason to reach any different conclusions on those matters. Therefore, the outcome of the appeal turns on the eaves height of the extension not exceeding the eaves height of the existing dwelling, in order to meet the limitation at paragraph A.1 (d).
6. According to the submitted drawings, the fascia board on either side of the extension would be in line with that on the dwelling. However, it does not necessarily follow that the eaves of the extension would be in line with those of the dwelling. The design of the extension incorporates a small sloping section on each side of the mainly flat roof treatment. The highest part of the extension roof would protrude above the fascia board level on either side and there would be a slightly higher fascia board on the end elevation. When measured from ground level adjacent to the external wall to where that wall meets the upper surface of the roof, the eaves height of the extension would therefore exceed the eaves height of the dwelling. The Government's Technical Guidance (TG)¹ aids interpretation of the GPDO. On page 11, this advises that the height of the eaves should be measured in the manner set out above. A diagram on page 12 illustrates the point. Whilst the TG does not carry the force of statute, it should be treated as authoritative in the absence of anything to the contrary. Accordingly, the extension would not meet the limitation in paragraph A.1 (d).
7. I appreciate that the difference between the eaves height of the extension and that of the dwelling would be limited. It may be that the appellant is able to resolve this difference by amending the roof design of the extension. However, there is no scope for discretion when assessing development against the limitations of the GPDO; either those limitations are met or they are not. In the event of any limitations not being met, development cannot benefit from the planning permission granted by the GPDO. Whilst there might be limited views of the extension, neither this nor the higher eaves level of the neighbouring garage are relevant matters in this appeal.
8. Therefore, on the balance of probability the appellants have not shown that the extension is permitted by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of a grant of express planning permission, the extension would not be lawful for planning purposes.

Conclusion

9. 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 extension 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.

Formal Decision

10. The appeal is dismissed.

Stephen Hawkins INSPECTOR

¹ Permitted development rights for householders Technical Guidance: MHCLG September 2019.