



Appeal Decision

Site visit made on 5 July 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/D3640/X/21/3270302

Annexe, 161 Queens Road, Bisley, Woking GU24 9AU

- 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 Geoffrey Bonner against the decision of Surrey Heath Borough Council.
- The application Ref 20/0617/CES, dated 16 July 2020, was refused by notice dated 1 December 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 *"161 Annex Queens Road-existing house, with existing upper loft space, under permitted development to add 2 no dormers, to create additional head room. The property is owned by 1 no family sharing the plot with 161 Queens Road."*

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. The description of the proposal in the banner heading is taken from part 5 of the application form. On the decision notice, the Council described the proposal as the erection of two side dormer extensions. However, I am not clear whether the modified description was ever agreed with the appellant. Unlike in the case of an application made under s191 of the Act, there is no power to modify the description of development or substitute another description without agreement. Therefore, I have dealt with the appeal on the basis of what was stated on the application form.

Main Issue

2. The main issue is whether it has been shown that the proposal is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class B (GPDO).

Reasons

3. It is for the appellant to show that an LDC should be issued in respect of the proposal, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a detached residential building with living accommodation arranged over two floors. The building is set back from Queens Road behind a much larger detached residence, which I am given to understand is subdivided into two flats, Nos 161 and 163. The building originated in the mid-1990s as a double garage, being converted to

accommodation following the grant of planning permission in 2016¹. The effect of condition 4 of the above permission is to restrict the use of the building to accommodation which forms part and parcel of No 161, thereby preventing its use as a separate self-contained dwelling.

5. The proposed dormers would be on the side-facing roof slopes of the building. The GPDO Part 1, Class B permits an addition or alteration to the roof of a dwellinghouse provided the size, height and locational limitations in paragraph B.1 of that Class are satisfied and the conditions in paragraph B.2, which govern the external materials used, the proximity to the eaves and the type of windows in the side elevations, are also complied with. The proposal would meet the size and location limitations in paragraph B.1. Additionally, the proposal would use similar external materials to those of the dwelling and would be set back more than 0.2 m from the eaves of the original roof, in accordance with paragraph B.2 (a) and (b) respectively.
6. Be that as it may, the available evidence does not show that the GPDO Part 1 would apply to the building. Firstly, any claimed use of the building as a separate, self-contained dwelling would be in breach of condition 4 of the 2016 planning permission and therefore would not be lawful. The effect of the GPDO at Article 3.(5)(b) is that development in Part 1 is not permitted where the use as a dwelling is not lawful.
7. For use of the building as a separate self-contained dwelling to be lawful, the four-year time limit for taking enforcement action in s171B(2) of the Act would have to have expired. In this regard, the appellant would have to provide clear, precise and unambiguous evidence to show that, on the balance of probability, such use had been continuous for a period of more than four years before the date of the application and there would need to be no evidence which contradicted or made the claim less than probable. Little evidence was provided to support such a claim, however. Having a separate postal address and Council Tax rating are not conclusive of a separate, self-contained dwelling, much less the lawfulness of such a use for planning purposes.
8. Secondly, Part 1 does not permit development other than in the case of a dwellinghouse. Flats are excluded from the GPDO definition of a dwellinghouse at Article 2.(1). The appellant suggested that the building is occupied by members of the same family who occupy No 161. The information before me is that No 161 is a flat. If the building is used as part of a flat, it is not a dwellinghouse for the purposes of the GPDO.
9. Moreover, even if it had been shown that the building was lawfully used as a separate dwelling, whether the windows in the dormers would be obscure glazed is uncertain. As the submitted drawings show that five of the windows would serve bedrooms, it is more likely that those windows would contain clear glazing. Also, the windows would open at less than 1.7 m above the room floor level. As a result, the proposal would not comply with the GPDO Part 1, Class B at paragraph B.2 (c), which requires windows in the side elevation to be obscure glazed and non-opening unless the parts which can be opened are more than 1.7 m above the floor of the room in which they are installed.
10. Consequently, the appellant has not shown to the required standard that the proposal is permitted by the GPDO. It follows that in the absence of a grant of

¹ Council Ref: 15/1027.

express planning permission, the proposal would not be lawful for planning purposes.

Conclusion

11. 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 proposal 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

12. The appeal is dismissed.

Stephen Hawkins

INSPECTOR