



Appeal Decision

Site visit made on 3 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2021

Appeal Ref: APP/K0425/X/21/3274037

13 Institute Road, Marlow SL7 1BL

- 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 E Munnoch against the decision of Buckinghamshire Council.
- The application Ref 20/07502/CLP, dated 21 September 2020, was refused by notice dated 2 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 described as: *"Certificate of lawfulness of permitted development for alteration of existing gate and wall, alterations to windows situated on the ground and first floors in relation to internal changes, and proposed roof lights"*.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The description of the proposed development in the banner heading is taken from the application form. I have dealt with the appeal accordingly. Whilst a modified description was used by the Council, I understand that this was never agreed with the appellant. The modified description cannot be taken as having been agreed on the basis of the appellant not responding to correspondence. In the case of an application made under s192, there is no power to modify the description of development or substitute another description without agreement.
2. During the site visit, I observed that works to the front boundary wall had been undertaken since the submitted survey plan and elevations were prepared. However, as far as I could see, no other works described in the application have been carried out. Moreover, it is the date of the application that is relevant for determining the lawfulness of the proposal. There was no suggestion that the works to the front boundary wall were undertaken prior to submission of the application. For these reasons, it remains appropriate to consider this appeal as arising from an application made under s192 of the Act.
3. At s195(2)(a), the Act confirms that where, as in this case, an appeal is made against the refusal of an LDC, the sole consideration is whether the Council's decision was well-founded. Therefore, this appeal is concerned strictly with matters of fact and law. Planning merits considerations, i.e. whether the proposal would obtain planning permission, can have no bearing on my decision. Similarly, the reasons behind the proposal are of limited relevance.

Main Issue

4. The main issue in this appeal is whether it has been shown that the proposal, which includes works to the front boundary wall, alterations to windows and additional roof lights, is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) at Article 3, Schedule 2 (GPDO).

Reasons

5. It is for the appellant to show that an LDC should be issued for the proposal, the relevant test of the evidence being on the balance of probability.
6. The appeal site contains one half of a pair of semi-detached dwellings located in the Marlow Conservation Area (CA).

Works to the front boundary wall

7. The dwelling is fronted by a low wall, with taller gate piers on either side of pedestrian and vehicular entrances. The submitted drawings show removal of a section of the wall around 2 m in length together with a gate pier, to enlarge the vehicle entrance.
8. Part 11, Class C of the GPDO grants planning permission for demolition of the whole or part of any wall, provided the limitation at paragraph C.1 is not exceeded. The effect of this limitation is that only where a wall which abuts on a highway is no taller than 1 m would its demolition be permitted by Class C. Whilst part of the front wall is lower than 1 m, the gate piers clearly exceed that height. When taken as a whole, the overall height of the front wall is therefore greater than 1 m. Accordingly, removing the section of front wall is not granted planning permission by Part 11, Class C.
9. Additionally, the proposal involves installing a metal gate in the pedestrian entrance, together with a metal railing on top of the remaining front wall. Part 2, Class A of the GPDO grants planning permission for amongst other matters, the erection or alteration of gates and walls. This is subject to the limitation in paragraph A.1 (a) that where a gate and wall are adjacent to a highway, the height must not exceed 1 m above ground level. As the overall height of the new gate and railings would be no more than 1 m, this aspect of the proposal would be granted planning permission by Part 2, Class A. However, this has no bearing on my conclusion in respect of removing the section of front wall.

Ground floor and first floor windows

10. The submitted drawings show a repositioned first floor window in the side wall of the dwelling and alterations to windows in the side and rear walls at ground floor level.
11. The planning permission granted for enlarging, improving, or otherwise altering a dwelling in the GPDO Part 1, Class A is dependent on, amongst other matters, the condition at paragraph A.3 (b) being met. This requires any upper-floor window located in a side wall to be obscure-glazed and non-opening, unless the parts of the window which can be opened are more than 1.7 m above the floor of the room in which the window is installed. As the repositioned window would serve a bedroom, it is not unreasonable to assume that it would be clear glazed and capable of opening. The submitted drawings

do not show otherwise. Whilst the existing first floor side window is likely to be clear glazed and openable, in the context of the GPDO that has no relevance to the proposal. Therefore, whilst the alterations to ground floor windows would satisfy the relevant conditions and limitations, having regard to the likely failure to satisfy the condition in paragraph A.3 (b), it has not been shown that the repositioned first floor level window would be granted planning permission by Part 1, Class A.

Rooflights

12. The drawings also show two additional rooflights installed in a side roof slope of the dwelling. The GPDO Part 1 Class C permits certain alterations to the roof of a dwelling subject to the condition at paragraph C.2, which requires that any window located on a roof slope at the side of a dwelling is obscure-glazed and non-opening, unless the parts of the window which can be opened are more than 1.7 m above the floor of the room in which the window is installed. The submitted drawings do not clearly show that the rooflights are obscure glazed and incapable of being opened. As it is not possible to conclude with any reasonable certainty that the rooflights would satisfy the condition at paragraph C.2, it has not been shown that they are permitted by Part 1, Class C.

Other matters

13. In reaching the above findings, I acknowledge that the Council referred to a superseded version of the GPDO in the reasons for refusal. However, when the Council's case is read as a whole it is apparent that they clearly understood what was being proposed. The works were assessed against the relevant limitations and conditions in the current GPDO. In any event, it would be wrong to grant an LDC where the evidence suggests that the proposal is not lawful on the basis of what, on the face of it, is an error which does not go to the substance of the matters in the appeal. I am not convinced that modifying the description made any significant difference to the Council's assessment. No firm evidence was put forward to suggest why I should reach a different interpretation to that of the Council in respect of the above matters.
14. I can sympathise with the appellant's sense of frustration concerning the handling of their application and what they view as deficiencies in communication by the Council. The revised National Planning Policy Framework requires Councils to approach decision-making in a positive and creative way and to work proactively with applicants. I am also acutely aware that the outcome of this appeal will not move matters forward as swiftly and positively as the appellant might have hoped. Even so, given the fundamental issues set out above, I am not convinced that there would have been a significantly different outcome to the application had there been more communication between the respective parties. In any event, such considerations can ultimately have no bearing on my decision.

Conclusion

15. The appellant has been unable to show to the required standard that all of the proposed works are granted planning permission by the GPDO. Having regard to the potential for uncertainty, I do not intend to make a split decision by issuing an LDC in respect of the alterations to the ground floor windows and erection of the gate and railings. Whilst I am satisfied on the evidence that, in isolation, those works would be granted planning permission by the GPDO, they

are nevertheless an intrinsic part of the proposal and are shown on the same drawing.

16. 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 proposed works to the existing gate and wall, alterations to ground and first floor windows and the additional roof lights 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

17. The appeal is dismissed.

Stephen Hawkins

INSPECTOR