



Appeal Decision

Site visit made on 14 October 2021

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2021

Appeal Ref: APP/Z5630/D/21/3281116

7 Oakdene Drive, Tolworth KT5 9NQ

- 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, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs Sunit Kaur Chopra against the decision of Royal Borough of Kingston Upon Thames.
 - The application Ref 21/01735/PAEXT, dated 26 May 2021, was refused by notice dated 16 July 2021.
 - The development is a 6m ground floor single storey rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions.
3. 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 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.
4. Paragraph A.4(4) states that sub-paragraphs (5) to (7) and (9) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act, such a refusal is to be treated as a refusal of an application for approval. Notwithstanding this, the local planning authority notified each adjoining owner or occupier about the proposed development and an objection was received.
5. When I arrived at the appointed time for my site visit nobody was present to allow access to the rear of the property. However, I was able to see the presence of the single storey rear projection which forms part of the dwellinghouse from the public highway through the gap between the

properties. As such and given that this is an appeal in relation to permitted development, I consider that there is sufficient information before me to determine the appeal.

Main Issues

6. Whether the proposed development satisfies Schedule 2, Part 1, Class A of the GPDO.

Reasons

7. The single storey extension would extend across the full width of the property and would be facilitated by the removal of the existing rear projection and conservatory.
8. Schedule 2, Part 1, Class A of the GPDO grants planning permission, subject to various criteria, for the enlargement, improvement or other alteration of a dwellinghouse. The criteria in dispute, and as to whether it applies, is paragraph A.1(j)(iii). This states that development is not permitted if *'the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse'*.
9. Both parties agree that the extension would accord with all the other criteria and that the rear projection is original. They also agree that the extension would be more than half the width of the original dwellinghouse.
10. The appellant contends that the proposal is for a rear extension subject to the limitations within A.1 (g) and that (j) is not applicable as the existing projection would be demolished. However, consideration of all the criteria is necessary and whilst some may not be applicable (j) refers to the *original dwelling* rather than the existing or remaining. The rear projection creates a side wall and is still applicable even though it will be removed because it is part of the original dwellinghouse. The proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse and have a width greater than half the width of the original dwellinghouse and therefore would not accord with criteria A.1 (j) (iii).
11. Both the Council and the appellant have referred to appeal decisions which support their approach. I have not been provided with full details of these cases; however, I have had regard to the case *Arnold v Secretary of State for Communities and Local Government* [2015] EWHC 1197 (Admin)¹. The judgement explains that a limitation is to be read as stated and supported the appeal inspector's conclusion in relation to extending beyond a wall forming a side elevation² – *"Firstly, there is no caveat in the GPDO which indicates that if original walls are demolished then the limitations within in it no longer apply. Secondly, if this argument were to apply it would mean that any amount of increase in width could occur, so long as other limitations, such as not being within 2m of the boundary of the curtilage (A.1(g)) were satisfied. On a large plot such as this it could lead to huge additions being added beyond the line of an original side wall simply because it had first been demolished. I cannot accept that this was the intention of the Government in the rights conveyed*

¹ Referenced in the Council's delegated report.

² Paragraph 50 of the judgement sets out the restrictions for side walls which at the time were A.1(h). These are the same as the current GPDO A.1(j).

and, as I have already pointed out, I am reassured in this finding as this is not what the wording of the GPDO actually states. Consequently, I find that the increase in the width of the front projection is not PD and required planning permission.

Conclusion

12. For the reasons given above, the proposal would not satisfy Schedule 2, Part 1, Class A of the GPDO as it would breach A.1 (j) (iii). I therefore conclude that the appeal should be dismissed.

Gill Ellis

INSPECTOR