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# Appeal Decision

No site visit

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 February 2022**

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**Appeal Ref: APP/Z5630/X/21/3273575**

**20 Reynolds Road, New Malden KT3 5NG**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs Rubina Chughtai against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
  - The application ref 20/03096/CPU, dated 2 January 2021, was refused by notice dated 25 March 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 hip to gable roof extensions with rear dormer to facilitate loft conversion.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs has been made by the appellant. This application is the subject of a separate Decision.

## Procedural Matters

3. I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have received no objection to this approach and am satisfied that the appeal can be determined on the evidence before me.
4. The appellant has raised concern that the Council informed neighbours of the application. While there is no statutory requirement to consult third parties on an LDC application, the Planning Practice Guidance confirms it may be reasonable for a local planning authority to seek evidence from these sources.

## Main Issue

5. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

## Reasons

6. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful.

7. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In a LDC, the burden of proof is on the appellant, on the balance of probabilities.
8. The Council refused to issue the certificate on two grounds, firstly that it has not been demonstrated, on the balance of probabilities, that the application site is in use as a single dwellinghouse and secondly, that it has not been demonstrated that the development falls within the parameters of permitted development under Schedule 2, Part 1, Class B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

*Whether the appeal site comprises a single dwellinghouse*

9. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to certain limitations and conditions. The Council suggest that the annexe is a self-contained residential unit and it is therefore not a single dwellinghouse. Part 1 relates specifically to development within the curtilage of a dwellinghouse. Operations which straddle two adjoining dwellinghouses would therefore not be permitted development.
10. I have been provided with a layout of the appeal building, which show there is a separate entrance for the main dwelling, known as 20 Reynolds Road and the annexe, known as 20A Reynolds Road. The proposed extension would straddle the main dwelling and the annexe. The annexe is shown laid out with a kitchen, shower room, living area and bedroom and therefore appears to have all the facilities required for day-to-day living. It is banded separately to the main dwelling for Council tax purposes and has a separate postal address.
11. Whether the annexe is ancillary to the dwellinghouse and is part and parcel of the main use, is a matter of fact and degree. The appellant suggests that the annexe is occupied by her mother. However, no details of how the building is occupied have been provided and so I cannot be sure that it is not occupied as a separate dwelling. Even if there is a familial relationship between the occupants of the annexe and the main dwelling, for the annexe to form part and parcel of the use of the main dwellinghouse, there should also be a functional relationship.
12. While I note an annexe may be separately banded for Council tax and a reduction sought where it is self-contained, it is not clear in this case, whether the appellant has sought a reduction on the basis that a dependant relative is living in the annexe. Although the property is referred to as 'The Annexe' in correspondence with the Valuation Office Agency (VOA), this is not an indication that the accommodation forms part and parcel of the use of the main dwellinghouse for planning purposes.
13. The appellant has drawn my attention to appeal decision, reference APP/Z5630/X/13/2198781, which considered the development of a single storey outbuilding in the rear garden. The Inspector in that case confirmed that the original house has been extended by the addition of a single storey side extension used as a self-contained annexe. However, no further discussion regarding the annexe is made in the decision letter and whether the appeal site benefited from permitted development rights does not appear to have been in

dispute, rather the area of dispute was whether or not the proposed building would be incidental to the enjoyment of the dwellinghouse.

14. I have considered whether a site visit would assist my understanding in how the annexe has been occupied. However, in an LDC, what matters is the factual situation existing at the date of the application. Furthermore, in my experience, a site visit is rarely sufficient on its own to determine how a premises has been occupied.
15. While the Council may have previously considered the appeal site to comprise a single dwellinghouse, it advises it has received an allegation that the building has been sub-divided into two separate self-contained residential units and that an enforcement case remains live. Section 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if (b) in the case of permission granted in connection with an existing use, that use is unlawful.
16. In my view, the appellant has not demonstrated, on the balance of probabilities, that the appeal site comprises a single dwellinghouse. Consequently, even if section 3(5) of GPDO is not engaged, it has not been demonstrated that planning permission would be granted by Part 1 of Schedule 2 of the GPDO.
17. Notwithstanding my findings above, I shall go on to consider whether the proposal would meet the limitations set out in the GPDO.

*Whether the proposal meets GPDO limitations*

18. Development is not permitted by Class B if, as specified in B1(d), the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres. The appellant's initial calculations were based upon a pyramid shape, however, the building includes an element of flat roof and so it appears the calculation is likely to be incorrect and is likely to exceed 50 cubic metres. The plans submitted in support of the application were produced by a company which has since gone out of business and so the appellant has been unable to provide clarification regarding these calculations.
19. During the appeal, the appellant submitted revised plans, with revised calculations. The Council has been given the opportunity to comment on these calculations. The height and width of the proposed dormer has been reduced and the plan indicates a side dormer to one side and no side dormer to the other, though it is not clear what this would mean in practice. With one 'side dormer', the appellant calculates the total volume to be 49.75 cubic metres. However, a revised roof plan has not been provided, or a revised layout, so it is difficult to understand from the plan provided how a hip to gable extension would be achieved without extending along the side of the building.
20. It is not clear whether the appellant has used the correct calculation to work out the 'hip to gable' as the appellant appears to have used the distance along the front of the building, rather than the distance from the front of the building to the back. The Council has had similar difficulty understanding the appellant's calculations and has attempted to estimate a volume calculation, which suggests the overall volume would exceed 50 cubic metres.
21. Since the burden of proof in such a case is on the appellant, it is essential that it is clear how the appellant has derived the volume calculations and that they

are accurate. The appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the appeal scheme is development which would be permitted by Class B of Part 1 of Schedule 2 of the GPDO.

22. The appellant has drawn my attention to No 9 Reynolds Road, which is asserted to be similar to the appeal scheme. However, I do not have full details of the scheme before me and cannot be sure it is comparable to the appeal scheme.

### **Conclusion**

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a hip to gable roof extensions with rear dormer to facilitate loft conversion 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.

*M Savage*

INSPECTOR