The Planning Inspectorate

Appeal Decision

Site visit made on 4 April 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 20th April 2022

Appeal Ref: APP/K3605/X/21/3271869
2 Kings Chase, East Molesey, Surrey, KT8 9DG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Maiia Williams against the decision of Elmbridge Borough Council.
- The application No: 2021/0004, dated 2 January 2021, was refused in part by the Council by notice dated 24 March 2021.
- The application was made under section 192(1)(b) of the 1990 Act.
- The development for which a certificate of lawful use or development is sought is new rear dormer roof extension, front rooflights and new roof to conservatory.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An accompanied site visit was arranged for the 4 April 2022. However, the Council did not attend at the arranged time. Nevertheless, the appellant's representative stated that he could allow access to the rear garden area through the house. As such, I carried out the site visit as an access required site visit.

3. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?

4. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

5. The LDC application was partially approved and partially refused by the Council. The refused part of the LDC relates to the alterations to the roof of the single-storey conservatory. The appeal therefore relates only to the *'new roof to the conservatory'*.

Main Issue

6. The main issue is whether the Council's decision to refuse, in part, the grant of an LDC was well-founded.

Reasons

7. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class A of Part 1 allows for the enlargement, improvement or other alteration of a dwellinghouse. (Class A)

8. The appellant seeks to establish that the new roof to the conservatory would be granted permission by virtue of Class A. Paragraph A.1 and A.2 set out limitations which proposals must adhere to benefit from the permitted development right. There is no dispute between the parties that the development falls to be considered under Class A. Nor is there any dispute that the development would adhere to the limitations under Class A set out at paragraph A.1 (a) through to (i) and (k) and paragraph A.2. I have no reason to disagree with these findings.

9. Paragraph A.1 (j) states that development is not permitted by Class A if *'the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would - … (iii) have a width greater than half the width of the original dwellinghouse'.*

10. The development would comprise the glazed roof of the existing conservatory being removed and a new tiled roof with a different pitch replacing it. The alteration to the pitch of the roof would increase the height of the roof where it meets the rear wall of the house. As such, the new roof would enclose a slightly greater volume than the existing roof. That increase in enclosed volume would constitute an enlargement of the dwellinghouse, even though that enlargement would be small in size.

11. The appellant has stated that the area shown as a utility room on the existing ground floor plans was part of the original dwellinghouse and has submitted a copy of the layout plan from the planning permission in 1984 for the estate (1984 plan). The Council considers that a planning permission granted in 2011 indicated that the original garage would be demolished and extended.

12. Based on my observations on site there is no indication that the utility room's external walls have been rebuilt or altered. The side and rear walls of it, that project beyond the line of the rear wall of the house, appear to correlate with that of the attached garage shown on the submitted 1984 layout plan.

13. Consequently, on the balance of probability the rear single storey projection, the utility room, was part of the original dwellinghouse. The Ministry of Housing, Communities and Local Government's publication *'Permitted Development Rights for Householders'* Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to interpretation of the GPDO. It states that *'A wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls'.*

14. The side wall of the utility room that adjoins the conservatory cannot be reasonably identified as a front or rear wall therefore it is a side elevation of the original dwellinghouse. The new roof to the conservatory would therefore extend beyond a wall forming a side elevation of the original dwellinghouse. The new roof to the conservatory would extend across the rear elevation of the

main part of the original dwellinghouse. The width of the original dwellinghouse would include that of the attached garage/utility room. However, based on the evidence before me the width of the new roof to the conservatory would have a width greater than half the width of the original dwellinghouse.

15. I acknowledge that the Council's evidence cites sub-paragraph (ja) of Class A. Nevertheless, whether the development would meet that limitation would not alter the fact that the proposed roof would not meet the limitations of paragraph A.1 (j)(iii) of Class A. As such, on the balance of probability, it has not been demonstrated that the new roof to the conservatory would be permitted by Class A of the GPDO.

Conclusion

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 new roof to conservatory 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.

D Boffin

INSPECTOR