

Appeal Decision

Site Inspection on 18 May 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Reference: APP/Q3115/X/22/3291164

Site at: Rose Cottage, Dunsden, Oxfordshire RG4 9PS

- The appeal is made by Mr and Mrs D Kowal under Section 195 of the Town and Country Planning Act 1990 as amended, against the refusal by South Oxfordshire District Council to grant a certificate of lawfulness.
- The application (Reference No. P/21/S4648/LDP) dated 31 October 2021 was refused on 21 January 2022.
- The application was made under Section 192 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for a proposal described in the application as: "Roof extension Rear single storey extension". In the appeal form the proposal was described as: "Proposed roof extension & proposed single storey side extension".

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The council's decision notice is potentially confusing, as it mostly uses the present tense (stating that the proposed roof extensions "do not comprise...", "do not maintain..." and "do not ensure that the edge of the enlargement closest to the eaves is..."), although the second reason relating to the single storey extension uses the future conditional ("would extend..."). The use of the present tense implies that the development had been carried out and that the application was retrospective (a Section 191 application). For the sake of clarity, I record here that this appeal concerns a proposal which has not been implemented.
2. The application is also potentially confusing. In Part 7 of the application form (headed "Grounds for Application"), details were supplied in response to questions about the existing and proposed uses of the land and about the Town and Country Planning (Use Classes) Order. Those matters are not relevant to this proposal. Again for the sake of clarity, this appeal is not about the lawfulness of an existing use or an existing building or a proposed use of land or the Use Classes Order - the appeal concerns the lawfulness of proposed extensions.
3. In this decision for simplicity I refer to compass points using the same labels as those on the application plans, although the directions are approximate - for example, the "east elevation" actually faces east-north-east, the "south" elevation faces south-south-east, and so on.

Assessment and Reasons

4. The dispute in this case concerns the interpretation of the Town and Country Planning (General Permitted Development) Order (the "GPDO"), and the application of this legislation to the proposal. The appellants (through their agent) maintain that the proposed development would be permitted by the GPDO. The council disagree.
5. The proposed development would have two main components - one would be the roof enlargement northwards and southwards; the other would be the ground floor extension to the south. I consider each component in turn below.
6. Under Article 3 and Class B of Part 1 of Schedule 2 of the current GPDO the enlargement of a dwellinghouse by altering or adding to its roof is permitted subject to numerous provisos and conditions.¹ One of the provisos is that development is not permitted under Class B if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
7. The appellants contend that the principal elevation of the house is the east elevation.² I can see why that is argued, given the presence in the east elevation of an entrance door and attached single-storey lobby. However, apart from the glazed lobby area (which was evidently constructed in 2010 as a replacement for a smaller porch) there are no windows or other openings facing east in the main part of the house.³ The south elevation has the greatest total window area of all elevations and both Rose Cottage and its neighbour Jay Cottage have their main outlook towards the south. As a matter of layout, function and appearance, the south is the principal elevation of the dwelling.
8. The layout of this site in relation to the adjacent road (Row Lane) is unusual. Rose Cottage is part of a semi-detached pair of dwellings situated on the inside of a gentle bend in Row Lane. Looking from Row Lane, the direct view of the lower part of Rose Cottage is partly obscured by a hedge and fence; but that is not an important point - the word "fronts" in this context means "faces towards". The inter-relationship between Rose Cottage and the road alignment is such that Rose Cottage has two elevations - the east and the south - facing towards Row Lane. The circumstances here are not as clear-cut as they might be, say, where a house stands on a corner site next to a road junction on a housing estate. Nevertheless I judge that both east and south elevations of Rose Cottage "front" the road. Thus the proposed development would not be permitted under Class B because part of the house would, as a result of the works, extend beyond the plane of an existing roof slope which forms the principal elevation of the house and fronts the highway.
9. There is a further complication about the proposed roof enlargements and GPDO provisos. The available evidence indicates that an integral part of the

¹ These are set out under the headings "Development not Permitted" (paragraph B.1) and "Conditions" (paragraph B.2) in Class B.

² In submitted documents the appellants' agent has frequently referred incorrectly to the "principle elevation". To a lesser extent in some documents the council has done so as well.

³ I refer here to the "main part of the house" as the ground floor extension (labelled "study" on the drawings but furnished and apparently used as a bedroom at the time of my inspection), which projects northwards from the western part of the property, has a ground floor window and small roof window facing east; but this extension is a subordinate feature set away from the east of the house.

development would include removing the chimney which at present projects above the south-facing roof slope. The chimney would in effect be replaced by part of the proposed roof extension. Although the alteration or replacement of a chimney is permitted (subject to restrictions) under Class G of Part 1 of Schedule 2 of the GPDO, development under Class B is not permitted if it would include the alteration or replacement of a chimney.

10. There are other reasons why the proposal would not be permitted by the GPDO, because as I have mentioned Class B has conditions as well as provisos. Contrary to the opinion of the appellants' agent, the roof enlargements to the north and south would not be "hip-to-gable" enlargements. Such enlargements involve extending a roof ridge in a straight line to meet an upward extension of a building's wall, to form a gable end to a ridged roof. In this instance the east-facing sloping end of the roof (the "hip") would not be converted into a gable. One of the conditions applying to Class B of Schedule 2 of Part 1 of the GPDO is that *other than in the case of a hip-to-gable enlargement* the enlargement shall be constructed so that the eaves of the original roof are maintained or reinstated. What is proposed here would not be a hip-to-gable enlargement and would not maintain or reinstate the eaves of the original roof.
11. Even if the south-facing and north-facing roof slopes were (wrongly) to be regarded as "hips", the extensions would still not be "hip-to-gable" enlargements for the purposes of the GPDO - they would have a "part-hipped" shape. Nor would these extensions have a dormer-type form, since they would not be set into the roof slope like normal dormers.
12. The way the council expressed the first part of the reasons for refusal is perhaps rather muddled, because of the references in the same sentence to hip-to-gable enlargements and to a measurement of 0.2 metres from the eaves edge (which applies to dormer structures). Even though it may not be well explained in the refusal notice, the basic message in this case is that for the purpose of deciding lawfulness under GPDO provisions for either hip-to-gable enlargements or dormer additions, the roof extensions would be "neither one thing nor the other".
13. I have reservations about the volume calculation in evidence for the appellants, but the figure has not been disputed by the council and I have decided that it is not necessary to pursue this aspect of the proposal.
14. Turning to the proposed ground floor extension, the relevant legislation is Class A of Part 1 of Schedule 2 of the GPDO. As explained above I have held that the south elevation of Rose Cottage is the principal elevation. More particularly for the purposes of Class A, this was the principal elevation of the *original* dwellinghouse, which stage would almost certainly have been before the conservatory was added. I have also found that this elevation fronts Row Lane. It follows that the proposed ground floor extension would not be permitted development because of the excluding criteria in Class A - that is to say, development is not permitted under Class A if the enlarged part of a house would extend beyond a wall which fronts a highway and forms the principal elevation of the original dwelling. The same conclusion would apply even if the south elevation of the house were to be regarded as a side elevation.
15. Neither side in this case has suggested that any provisions of the GPDO other than Classes A and B of Part 1 of Schedule 2 would result in permission being granted for the proposals, and I do not see any reason to find otherwise.

16. I note the comments made on the appellants' behalf about a decision by the local planning authority some years ago indicating the authority's then view that the principal elevation of Rose Cottage was the east elevation. I do not consider that view to be binding on me.
17. I also note the criticism that the council has changed its view several times in correspondence with the appellants' agent, and I can see that the council has provided inconsistent advice. But some inconsistency applies to the appellants and their agent as well - the application refers to the proposed single storey extension as a "rear" extension, and the appeal statement refers to it as a "side" extension.

Conclusion

18. For the reasons given above I conclude that the refusal to grant a certificate of lawfulness in respect of development described in the application as "Roof extension Rear single storey extension" was well-founded.

Formal Decision

19. I dismiss the appeal.

G F Self

Inspector