



Appeal Decision

Site visit made on 9 August 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2022

Appeal Ref: APP/Y3615/D/21/3282432

7 Platt Meadow, Guildford GU4 7EF

- 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 Mr Hitcham Adjali against the decision of Guildford Borough Council.
 - The application Ref 21/W/00083, dated 6 July 2021, was refused by notice dated 10 August 2021.
 - The development proposed is described on the planning application form as 'Proposal is for rear conservatory as per accompanying drawing there is an existing small single storey extension and the additional conservatory will result in a total depth 6.7m from the main rear wall of the original detached house'
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Decision

1. The appeal is allowed and prior approval is not required under the provisions of 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) (GPDO) for 'rear conservatory as per accompanying drawing there is an existing small single storey extension and the additional conservatory will result in a total depth 6.7m from the main rear wall of the original detached house' at 7 Platt Meadow, Guildford, GU4 7EF in accordance with the terms of the application, Ref 21/W/00083, dated 6 July 2021 and the plans submitted with it pursuant to Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4(2).

Preliminary 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 with, 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(7) to Part 1 requires the local planning authority to assess the impact of the proposed development on the amenity of all adjoining premises, taking into account any representations received.
5. Notwithstanding this, Paragraph A.4(4) to Part 1 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.
6. GPDO Article 3(4) states 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.'
7. The Council refused the application on the basis of Article 3(4), given that it considered that the development would be contrary to a condition attached to the original planning permission for the dwelling.

Main Issue

8. The main issue is whether the proposed development would be granted planning permission by Article 3(1), Schedule 2, Part 1, Class A of the GPDO.

Reasons

9. 7 Platt Meadow (the Host Property) was granted planning permission as part of a major residential development under Council application reference 79P0250. Condition 6 of that permission states:

'Notwithstanding the provisions of Article 3 and Class 1 of the Schedule 1 to the Town and Country Planning (General Development Order) 1977, no further enlargement or other alteration to the dwellings hereby approved shall be carried out without the prior approval of the Local Planning Authority'
10. The main contention between the parties is whether this condition has the effect of removing permitted development rights granted under the current iteration of the GPDO.
11. The condition makes reference to Article 3 and Class 1 of Schedule 1 to the GDO 1977, which has now been revoked. There is no reference to any future legislation pertaining to permitted development rights. As such, on its face, it is related only to the provisions of the GDO 1977.
12. In addition, the condition is not drafted in a way which unequivocally removes permitted development rights even under the GDO 1977. This is because, whilst a broad reference is made to Class 1 of Schedule 1, the condition does not specify that permitted development under this class has been removed. For example, it does not say 'no enlargement, improvement or other alteration permitted by Class 1 of Schedule 1 to the Town and Country Planning (General Development Order) 1977 shall be carried out or made to the dwelling'.
13. The condition simply implies that no enlargement or other alteration is permitted without the Council's prior approval. This does not even match the wording of Class 1 which also refers to 'improvement' to a dwelling. As such, it lacks the precision required in order to preclude certain types of permitted development.

14. Therefore, not only does the condition fail to apply forwards to future legislation (such as the current GPDO) but it also failed to effectively remove permitted development rights under the GDO 1977. For these reasons, the proposed development would not be contrary to condition 6. Therefore, Article 3(4) of the GPDO does prohibit the operation of Schedule 2, Part 1, Class A in this instance.
15. Where development permitted by Class A exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g), paragraph A.4(7) sets out that prior approval is required as to the impact of the proposed development on the amenity of any adjoining premises where any owner or occupier of any adjoining premises objects to the proposed development. There is no evidence to indicate that any adjoining owner or occupier has objected to the proposed development and therefore prior approval is not required.
16. There is no objection from the Council with regard to any other limitation, restriction or condition under Class A and there is no substantive evidence before me to indicate that the proposed development would conflict with any limitation, restriction or condition.

Other Matters

17. The appellant has indicated that condition 6 fails to meet the tests contained within the Framework (now Framework Paragraph 56) and that I should revoke it. However, this is not a matter which I can consider in relation to this appeal. Indeed, an application under section 73 of the Town and Country Planning Act 1990 (as amended) would be necessary for such a consideration to be made by the Council.

Conditions

18. The appellant's attention is drawn to the conditions included under Schedule 2, Part 1, Class A and in particular those set out at paragraphs A3 and A4(11).
19. It would be unnecessary and unreasonable to impose a matching materials condition because paragraph A.3 requires that the materials used in any exterior work other than in the construction of a conservatory (as proposed here) shall be of a similar appearance to those used in the construction of the exterior of the existing dwelling.
20. It is not necessary to include a condition specifying the approved plans given that Paragraph A4 requires adherence to the details submitted pursuant to the application in any case.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and prior approval is not required.

Luke Simpson

INSPECTOR