



Appeal Decision

Site visit made on 4 October 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/M3645/X/21/3275299

11 Alexandra Road, Warlingham CR6 9DW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Karen Sutton against the decision of Tandridge District Council.
 - The application ref TA/2020/2097, dated 18 November 2020, was refused by notice dated 31 March 2021.
 - The application was made under sections 192(1)(a) and (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 described on the application form as: 'To create a roof terrace on an existing flat roof (new roof has been installed and is approx. 12ft x 9ft), with composite decking on the floor, to be fitted with frosted glass balustrades to a height of 1100mm to comply with building regulations. No machinery to be installed and the proposed use is for occasional use in the summer months for myself'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated on the appeal form that the appeal is made under section 191 of the Act, which relates to development which has already been carried out. The description of the development for which a LDC is sought, provided in the application form, refers to the use of an area of an existing flat roof as a roof terrace and the installation of decking and balustrades. The application form and the Council's decision notice refer to the application being made under section 192 of the Act, which relates to development proposed to be carried out. Specifically, section 192(1)(a) relates to any proposed use of buildings and other land, and section 192(1)(b) relates to any operations proposed to be carried out in, on, over or under land.
3. The balustrades referred to in the description of the development for which a LDC is sought have not been installed, and thus the proposed development has not been carried out. The appellant's statement also refers to the decking, balustrades and use of the roof terrace as being proposed. I therefore take reference to section 191 of the Act in the appeal form to be an error. Taking all of the above into account, I have considered the appeal in respect of an application made under sections 192(1)(a) and (b) of the Act.
4. The appellant has not provided any explanation as to why they consider the proposal would be lawful. They have made allegations concerning advice they

received from the Council, the Council's decision making process, the presence of other roof terraces in the local area, and a neighbouring development. These matters do not affect the lawfulness of the proposal. If the proposal would not comprise development requiring planning permission, or if it benefits from planning permission, then it would be lawful.

5. The Council has claimed the proposal would not comply with the permitted development rights set out at Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). No assessment appears to have been made as to whether the proposal would not comprise development requiring planning permission, or whether the proposal would constitute permitted development under any other Class of Part 1.

Main Issue

6. Taking the above into account, the main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposal would comprise 'development' as defined at section 55 of the Act, and if it would, whether the proposal would constitute 'permitted development' by virtue of the provisions of Part 1 of Schedule 2 of the GPDO.

Reasons

7. An appeal relating to an LDC is confined to the narrow remit of reviewing the Council's reason for refusal and then deciding whether the reasons are well-founded. The planning merits of the case do not fall to be considered. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. The burden of proof is firmly on the applicant and the Council must be supplied with sufficient information to satisfy it that the proposed development was lawful at the date of the application.

Whether 'development' requiring planning permission

8. The appeal site is a detached 2 storey house with a pitched roof. A single storey flat roofed extension protrudes to the rear and southern side of the dwelling. It is proposed to install composite decking and a frosted glass balustrade to the flat roof to create a roof terrace which would be accessed from the first floor rear elevation of the dwelling.
9. Section 57 of the Act states that, subject to provisions of that section, planning permission is required for the carrying out of any development of land. Section 55(1) of the Act states that 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(2)(a)(ii) of the Act clarifies that the carrying out of works for the maintenance, improvement or other alteration of any building which do not materially affect the external appearance of the building shall not be taken to involve development for the purposes of the Act.
10. Decking and balustrades would be installed to the flat roof. The proposed plans and the description of the development for which a LDC is sought clarify that the proposed balustrades would comprise frosted glass with a top rail to a height of 1.1 metres above the existing flat roof, set in slightly from the edges of the existing flat roof. The balustrades would form a notable physical addition

which would materially affect the external appearance of the dwellinghouse. The proposed balustrades would therefore comprise development requiring planning permission.

11. The submitted plans do not clearly identify the extent of the proposed composite decking, including its height, or its finish. I am therefore unable to confirm whether the proposed decking would not materially affect the external appearance of the building. Insufficient evidence has been provided to demonstrate the proposed composite decking would not comprise development requiring planning permission.
12. The proposed roof terrace would be located on top of part of the existing dwellinghouse and would be used as part of the existing dwellinghouse. The proposed use of the area of flat roof as a roof terrace would not therefore result in any material change of use of the land and would not comprise development requiring planning permission.

Whether 'permitted development'

13. Part 1 of Schedule 2 of the GPDO sets out development within the curtilage of a dwellinghouse which is 'permitted development'. Class A of Part 1 permits the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations. Paragraph A.1(j)(i) states development would not be permitted under Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and exceed 4 metres in height. Paragraph A.1(k)(i) and (iv) state development would not be permitted under Class A if it would consist of or include the construction or provision of a verandah, balcony or raised platform, or an alteration to any part of the roof of the dwellinghouse.
14. The proposed balustrades would follow the edge of the existing single storey rear extension roof, which projects beyond the side wall of the original dwellinghouse. The Council has stated the balustrades would measure 4.09 metres in height from ground level, which has not been disputed by the appellant.
15. The proposed roof terrace would comprise a balcony and would include balustrades which would exceed 4 metres in height from ground level and extend beyond the side wall of the original dwellinghouse on a flat roof. The proposal would therefore fail to accord with paragraphs A.1(j) and (k), and would not constitute permitted development under Class A.
16. Class B of Part 1 permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to conditions and limitations. Paragraph B.1(e)(i) states development would not be permitted under Class B if it would consist of or include the construction or provision of a verandah, balcony or raised platform. The proposal would therefore fail to accord with paragraph B.1(e)(i) and would not constitute permitted development under Class B.
17. Class C of Part 1 permits any other alteration to the roof of a dwellinghouse subject to conditions and limitations. On the information provided, the proposed development would appear to include the enlargement of the dwellinghouse on account of the installation of composite decking and frosted glass balustrades, which would increase the mass of the dwelling at first floor level. No information has been provided by the appellant to suggest this would

not be the case. As such, I do not consider the proposal would fall within the description of development permitted by Class C, because it would fall within the description of development permitted by Class B and would not be 'any other alteration to the roof'.

18. It has not therefore been demonstrated, on the balance of probabilities, that the proposed development would be lawful.

Conclusion

19. The proposed use of the flat roof as a roof terrace would not comprise development requiring planning permission. However, that use is only part of the proposal, which includes, and is reliant on, the proposed decking and balustrades. Those elements of the proposal would comprise development requiring planning permission. No planning permission exists for the proposed development and it would not therefore be lawful.
20. 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 proposed roof terrace with composite decking and frosted glass balustrades 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.

L Douglas

INSPECTOR