



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st NOVEMBER 2022

Appeal Ref: APP/Y0435/X/21/3278262

22 Latimer, Stony Stratford, Milton Keynes MK11 1HY

- 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 Mr & Mrs Huntley against the decision of Milton Keynes Council.
 - The application ref 21/00417/CLUP, dated 5 February 2021, was refused by notice dated 14 April 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 a single storey rear extension.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. Whether an LDC should be granted is strictly a matter of fact and law, based on the individual circumstances of the proposal. Therefore, recent Council determinations in respect of outwardly similar developments in the locality can have no bearing on my decision.

Main Issue

4. The main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether the appellant has been able to show that the proposal is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A (GPDO).

Reasons

5. It is for the appellants to show that an LDC should be issued in respect of the proposal, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a modern detached dwelling. The external walls are predominantly finished in a red/brown coloured brick, with some white weatherboard panels. The roof is covered with dark brown coloured, double Roman roof tiles.
7. The GPDO at Article 3, Schedule 2, Part 1, Class A grants planning permission to extend a dwelling, subject to the relevant size and locational limitations in paragraph A.1 being met and the relevant conditions in paragraph A.3 being complied with.

8. The proposal involves erecting a single storey extension at the rear of the dwelling. The Council did not dispute that the extension, which would be around 3 m in depth and of a similar height at the highest part of the roof, would meet the relevant limitations in Class A at paragraph A.1(b)-(f) and (i). There is no sound reason why I should disagree.
9. The condition in paragraph A.3(a) requires the external materials used in any extension (other than in the case of a conservatory) to be of a similar appearance to those found on the existing dwelling. The submitted drawings show that this condition would be complied with insofar as the external walls of the extension are concerned, as those walls would be finished in brickwork to match that of the existing dwelling.
10. The Government's Technical Guidance (TG)¹, assists in interpreting the GPDO. It advises that where an extension would have a pitched roof, to comply with the above condition the roof slopes should be covered in tiles that give a similar visual appearance to those used on the roof of the existing dwelling, with colour and style as important considerations. According to the submitted drawings it is intended to use grey slate tiles on the roof of the extension. The extension roof tiles would therefore have an entirely different visual appearance from the brown colour finish and the rounded, more rippled profile of the double Roman tiles used on the roof of the existing dwelling. No details were provided regarding the use of an alternative roof tile and I have to determine the appeal based on the information before me.
11. In addition, the rear elevation of the extension features a wide expanse of glazed bifold doors. The TG advises that to comply with the condition in paragraph A.3(a), the windows in an extension should give a similar visual appearance to those in the existing dwelling, for example in terms of their overall shape, and the colour and size of the frames. The substantial size and area of glazing in the bifold doors and the distances between the frame edges would not reflect the more modest proportions of the dwelling's existing windows, either in the rear elevation or elsewhere. As a result, the bifold doors differ in terms of their visual appearance from the windows in the existing dwelling.
12. Therefore, on the balance of probability, both in respect of the roof materials and windows, the proposal does not comply with the condition in paragraph A.3 (a). Development which does not comply with this condition cannot benefit from the planning permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that, in the absence of a grant of express planning permission, the proposal would not be lawful for planning purposes.

Conclusion

13. 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 single storey rear extension 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.

Stephen Hawkins

INSPECTOR

¹ Permitted development rights for householders Technical Guidance: MHCLG September 2019.