



Appeal Decision

Site visit made on 1 November 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 16TH DECEMBER 2022

Appeal Ref: APP/D3640/X/21/3280065
55A Robins Bow, Camberley GU15 3NP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr N Lambert against the decision of Surrey Heath Borough Council.
 - The application (Ref. 20/0790), dated 23 January 2021, was refused in part by the Council by notice dated 27 April 2021.
 - The application was made under section 191(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 Construction of two dormer windows (one within the south and one within the north elevation).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice, as agreed by the appellant on the appeal form, since this more properly describes what is applied for than the application form, which referred to the description of development as a 'residential dwelling'.
3. A second decision notice of the same date in respect of the same application number detailed above granted a lawful development certificate (LDC) in respect of development described as 'Insertion of a rooflight in accordance with the drawings and 'Technical Guidance Check' submitted with the application'.

Main Issue

4. The main issue is whether the Council's refusal in part to grant a LDC was well founded.
5. The assessment to be made is whether, on the facts of the case and in accordance with relevant planning law, the proposed development would be lawful. Planning merits are not relevant and the onus is on the appellant to make their case on the balance of probabilities.

Reasons

6. The Council's reasons for refusing to grant a LDC indicate its view that neither of the dormer windows are permitted development ('PD') under Part 1, Schedule 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('Class B'). This is on the basis that they have been 'constructed in white cladding' and that this material 'is not present on the application dwelling', meaning compliance with Condition B.2 (a) of Class B is not achieved.
7. As regards the southern elevation dormer window, the decision notice also states that this is rendered unlawful in view of Condition 5 of planning permission for the construction of the appeal building¹ which states as follows:

"Condition 5:

Before first occupation of the development hereby approved the kitchen window in the south elevation facing 57 Robins Bow shall be completed in obscure glazing and any opening shall be at high level only (greater than 1.7m above finished floor level) and retained as such at all times unless otherwise agreed in writing with the Local Planning Authority. No other openings shall be created in this southern elevation unless otherwise agreed in writing with the Local Planning Authority."

8. I will firstly consider then whether or not the dormer windows would represent PD under Class B. If so, I will then need to consider the implications of Condition 5 as outlined above as to the lawfulness of the southern elevation dormer window.

Whether or not PD

9. As regards compliance with the conditions and limitations in Class B, the only matter in contention is whether² the materials used in the exterior work of the northern and southern dormer windows are 'of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'.
10. The appellant draws my attention to white cladding used in properties forming part of a terrace with the appeal property. However, the clear requirement in Class B is that materials used in exterior work are similar to those in the *existing dwellinghouse*. In my view, there is no scope in this condition to consider materials used in adjoining properties and, as explained above, planning merits are not relevant to my assessment.
11. The appellant does not argue that the white cladding used in the exterior work of the dormer windows is of similar appearance to materials used in the construction of the appeal property itself. I find also that the white cladding exterior of the dormer windows are not materials which are of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, since the latter do not include white cladding or other materials of a similar appearance.
12. Thus neither the northern or southern dormer windows represent PD under Class B. These require a specific grant of planning permission which has not

¹ Ref: 15/0756

² Pursuant to para B.2(a) of Class B

been obtained and so they are not lawful. It is not therefore necessary for me to consider the implications of Condition 5 as outlined above.

Conclusion

13. For the reasons given above I conclude that the Council's refusal in part to grant a certificate of lawful use or development in respect of Construction of two dormer windows (one within the south and one within the north elevation) 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.

V Bond

INSPECTOR