



Appeal Decision

Site visit made on 29 November 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th JANUARY 2023

Appeal Ref: APP/C3620/X/21/3276961

Land at 25 Albany Park Road, Leatherhead KT22 7PA

- 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 Ms Carole Tunstill against the decision of Mole Valley District Council.
 - The application ref MO/2021/0616, dated 29 March 2021, was refused by notice dated 25 May 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 and joining together the two existing rear sections of the house.
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Preliminary Matters

1. As noted above, the LDC application subject of this appeal was made under section 192(1)(b) the Town and Country Planning Act 1990 as amended (the 1990 Act) and relates to proposed development. However, at the site visit I noted that an extension had been erected. This appeared to be the same as the extension subject of this appeal. Nevertheless, my determination of the appeal has been made with regard to the plans before me and on the basis of the LDC application made for a proposed scheme of development.

Main Issue

2. Section 192(2) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that the development referred to in the application would be lawful if begun on the date the application was made.
3. It is the appellant's case that the proposed development would be permitted by Class A of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), hereafter referred to as Class A. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. Criteria (a) to (l) of A.1. specify the type of development that would not be permitted by Class A.

4. The Council's officer report considers each of these criteria in turn, and suggests that the development would fail to meet criteria A.1.(f). The Council also refer to criteria A.1.(j) in its appeal statement.
5. Accordingly, the main consideration in this case is whether or not the proposed development would be that specified in any of the criteria of A.1., which would mean that it would not be permitted by Class A.
6. In reaching my decision in this case, I have had regard to the MHCLG Technical Guidance on permitted development rights for householders. This includes advice on how to consider the criteria of the 2015 Order relevant in this case.

Reasons

7. The appeal site is occupied by a two storey semi-detached dwelling, which forms a pair with the dwelling at 27 Albany Park Road. The existing plans (drawings numbered 001 and 002) show two flat roof single storey projections to the rear of the dwellinghouse. The smaller of the two is off the living room, whereas the larger is occupied as a kitchen. The proposed extension would be in the place of the smaller projection. It would be slightly set off the boundary with No. 27, and would join to the side of the kitchen projection.
8. Criteria A.1.(f) relates to single storey extensions and states that development is not permitted if the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse.
9. The appellant suggests that the smaller living room projection is part of the original dwellinghouse and that the proposed development would extend from the rear of this by some 2.075 metres, which is less than the distance specified in A.1.(f).. The Council suggest that the depth of the extension for the purposes of A.1.(f) should be measured from the two storey rear elevation of the dwellinghouse. It suggests that the depth would, therefore, be some 3.35 metres.
10. I note the parties' dispute whether or not the single storey living room projection is part of the original dwellinghouse. If I were to agree with the Council, the depth of the enlargement proposed, measured from the rear wall of the two storey element of the dwellinghouse, would clearly exceed the limits set out in A.1.(f). However, if I were to agree with the appellant in this case, my conclusions would not change.
11. If the living room projection were to be regarded as part of the original dwellinghouse, the layout of the original dwellinghouse would be such that its rear wall would be stepped. In this case, the drawings at page 19 of the MHCLG Technical Guidance are relevant. The Guidance advises that each of the three extensions in the first drawing would be permitted as none would extend more than 3 metres from each step of the rear wall of the dwellinghouse to which it would be attached.
12. Having regard to the Guidance, I note that the enlargement proposed would be wider than the existing living room projection, and would fill the gap between the two existing rear projections. It would, therefore, extend from both the rear elevation of the two storey element of the dwellinghouse, as well as from the rear elevation of the living room projection. As such, the second of the two drawings on page 19 of the MHCLG Technical Guidance is relevant. Despite the

enlargement extending only some 2.075 metres from the rear wall of the single storey living room projection, it would also extend more than 3 metres from the rear wall of the two storey element of the dwellinghouse. Accordingly, even if the single storey living room projection were to be regarded as being part of the original dwellinghouse, the proposal would still exceed the limits set out in A.1.(f).

13. Turning to criteria A.1.(j), this states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would, amongst other matters, have a width greater than half the width of the original dwellinghouse.
14. As I note above, the extension would fill the gap between the two existing rear projections and would, therefore, extend to the side of the living room projection. As such, I have had regard to the MHCLG Technical Guidance at pages 22 and 23. The enlargement proposed in this case would extend from the side wall of the living room projection. If I were to regard the living room projection as being part of the original dwellinghouse, as the appellant suggests, the proposed enlargement would extend from a wall forming a side elevation of the original dwellinghouse. The Council suggest that the width of the proposed extension would be greater than half the width of the original dwellinghouse. This is not disputed by the appellant. For these reasons, the proposal would also exceed the limits set out in A.1.(j).
15. In addition to the above, I have considered whether A.1.(ja) would be relevant in this case. This states that development is not permitted by Class A if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j) of A.1.. The MHCLG Technical Guidance provides an explanation of this at page 23.
16. I note that the enlargement proposed would be joined to the existing kitchen projection. If this were to be regarded as an existing enlargement of the dwellinghouse, rather than part of the original dwellinghouse, the combined width of this together with the enlargement proposed, would exceed the limits set out in A.1.(j).

Summary

17. All things considered, regardless of whether or not either of the existing rear projections are regarded as being part of the original dwellinghouse, the enlargement proposed would exceed the limits set out in one or more of the criteria of A.1. of Class A. The development as proposed would not, therefore, have been permitted by the 2015 Order if begun on the date the LDC application was made.

Conclusion

18. 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 and joining together the two existing rear sections of the house 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.

Formal Decision

19. The appeal is dismissed.

J Moss

INSPECTOR