



Appeal Decision

Site visit made on 5 January 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2023

Appeal Ref: APP/P0240/X/22/3293583

16 Stanley Road, Streatley LU3 3PW

- 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 Mr Ravi Shah against the decision of Central Bedfordshire Council.
 - The application ref CB/21/01584/LDCE, dated 6 April 2021, was refused by notice dated 14 February 2022.
 - 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 described as: "Residential, Existing steel railings around a roof terrace on a single storey rear extension."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing development which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Ravi Shah against Central Bedfordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant was not present at the site at the appointed time. I asked the Council officer to return to his vehicle whilst I continued to go into the site through the side gate which was unlocked. I therefore carried out a site visit unaccompanied, informing the main parties subsequently that I intended to proceed to a decision unless there was any objection. Neither main party objected to me proceeding in that manner.
4. As acknowledged within the description on the application form and which I have reproduced above, as I am obliged to do, the railings around the flat roof of the single storey part of the dwelling, have already been constructed. The submitted drawings are not entirely consistent with what I saw on site and so I have considered the development on the basis of what exists as the application was clearly made under s191(1)(b) of the Act in an attempt to ascertain whether the operation which has already been carried out is lawful rather than proposing any changes to what has been carried out. I have amended the description of development on the decision and the LDC to only refer to matters which involved an act of development.

Main Issue

5. The Council consider that the proposed development would not comply with any class within Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO) and so would not be permitted development (PD) under the provision of Article 3 of that Order.
6. The Council has also referred to a planning condition that was imposed on the planning permission for a single-storey rear extension which I have taken from the context of the statements, to mean the building upon which the railings have been constructed. The condition states:

"Notwithstanding the details submitted with the application, any access afforded to the roof of the extension hereby permitted shall be only for the inspection and maintenance of the roof."
7. The planning condition therefore does not prevent the construction of developments that would not normally require planning permission. It does not for instance remove PD rights under the provisions of the GPDO but it does seek to prevent the use of the roof other than in the limited circumstances specified. Whilst the railings that have been erected make any access to the roof safer, their construction does not breach the planning condition.
8. The main issue in both appeals is whether the decision was well founded. The onus is upon the appellant to demonstrate their case. Planning merits are not of relevance as the appeal will turn on matters of law.

Reasons

9. The railings are positioned around 2 sides of the flat roof of the rear extension. The sides of the roof without railings are against the glazed doors in the rear of the large rear roof-dormer on the property and the other is adjacent to the pitched roof of the adjoining property. The flat roof is therefore enclosed on each side.
10. There is no dispute that the PD rights within Schedule 2, Part 1, Class A of the GPDO are not applicable and the dispute revolves around which class of Part 1 relating to operations affecting roofs, is relevant to the development. Class B relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class C relates to any other alteration to the roof of a dwellinghouse. It is logical to look at what form of development each class permits before potentially considering the limitations or conditions applicable in each instance.
11. For Class B to apply, the operations do not need to have a volume to be regarded as an "enlargement" rather than just an alteration and in that respect I am referred to some relevant case law. In particular the Richmond-Upon-Thames¹ case related to parapet walls that had been constructed on a dwellinghouse which were considered to represent an enlargement of the building and Class B therefore applied. The parapet walls in that case were constructed of brick 1m high and were therefore of substantial construction. I am mindful that a concern there was whether they would be alterations to the dwellinghouse covered by Class A or alterations to the roof to which Classes B

¹ Richmond-upon-Thames LBC v SSSE and J A P Neale [1991] JPL 948

or C apply. However, the other main case referred to was a challenge to a decision by the London Borough of Camden² which concerned a roof terrace and railings. In that case it was held that “there is no question of these railings enlarging the external experience of no. 8. The position might have been different if a brick parapet wall had been constructed...” (as was the case in Richmond where it was held Class B applied) “...but the iron railings are plainly within Class C of the Order and are not to be regarded as an enlargement of a dwellinghouse consisting of an addition or alteration to its roof under paragraph B.”

12. The Camden case is therefore helpful in this appeal. The railings involved on this property are thin and constructed of metal rather than more robust, bulky and solid brick parapets as in the Richmond case. When viewed from the end of the garden, the railings are consequently difficult to see against the dark tiles of the nearby roofs or even against the hung-tiles and windows on the vertical face of the dormer at the appeal building. Although I could not enter other neighbouring land, it is reasonable in my opinion to consider that the railings would be even less noticeable from further away. As such, the structure does not as a matter of fact and degree provide any obvious enlargement of the external appearance of the dwellinghouse. I therefore consider that it is a reasonable judgement to consider the railings as ‘any other alteration to the roof of a dwellinghouse’ to which Class C applies.
13. The Council accepts that if Class C is applicable, the development would not contravene its limitations set out within paragraph C.1 and I agree. As such, the development is permitted development which did not require planning permission.

Conclusion

14. 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 existing steel railings around a roof terrace on a single storey rear extension, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

INSPECTOR

² R (oao Barry Cousins) V LB Camden [2002] EWHC 324