



Appeal Decision

Site visit made on 24 April 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Appeal Ref: APP/Y0435/X/22/3298151

3 Churston, Broughton, Milton Keynes MK10 7BJ

- 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 Mrs Jackie Bennett against the decision of Milton Keynes Council.
 - The application ref 21/02924/CLUP, dated 24 September 2021, was refused by notice dated 18 November 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 described as a 'loft conversion with dormer extension and rooflights to side roofslopes'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposal would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that 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 shall refuse the application.
4. My decision is therefore based on the facts of the case and any relevant judicial authority. For the avoidance of doubt, this means that any planning merits are not relevant to this appeal. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made, that being 24 September 2021.
5. Schedule 2, Part 1, Class B of the GPDO states that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development, subject to various limitations and conditions. Paragraph B.1(c) states that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any

- existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
6. The appeal property is a semi-detached two storey dwelling that fronts the public highway along Churston. From the various submissions, it appears that the area of dispute between the parties is limited to the question of whether the proposed dormer extension would extend beyond the plane of a roof slope that forms part of the principal elevation of the dwellinghouse.
 7. The technical guidance¹ which accompanies the GPDO states that in most cases the 'principal elevation' will be that part of the house which fronts (directly or at an angle) the main highway serving the house. It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
 8. At pages 15 and 33, the technical guidance is clear that a principal elevation could include more than one wall facing the same direction and provides the example of an 'L' shaped frontage, where the entirety of the resulting stepped elevation is to be considered as forming the principal elevation. In such cases, the roof slopes above these elevations will form the principal elevation and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes.
 9. In this case, the appeal property has an 'L' shaped frontage, resulting in a stepped elevation with the wall containing the entrance to its carport, and a bedroom window above, being set back from, but parallel with, the gable elevation that contains its front door and main windows, including a ground floor bay. Therefore, I am of the view that both of these front facing walls constitute the principal elevation of the property.
 10. Above this the property has a dual pitch roof comprising of two main sections. Over the front facing wall which contains the carport entrance, the roof is orientated with its ridge running from southwest to northeast. This is set at a right angle to, and connects with, the dual pitch roof over the front facing gable wall with its ridgeline running from front to back, southeast to northwest.
 11. The proposed dormer extension would be located towards the front of the property and would infill part of the area where the two roof slopes meet. In doing so, the dormer would extend beyond the plane of the roof slope that forms part of the principal elevation above the entrance to the carport. Therefore, the proposed extension would not comply with the limitation set out in paragraph B.1(c) of Schedule 2, Part 1, Class B of the GPDO.
 12. In support of the appeal, the appellant has referred me to what they refer to as an identical application in the same street. However, I do not have the full details of this other scheme before me and, in any case, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed development would be lawful, regardless of how the Council may have determined other cases.

¹ Permitted development rights for householders: Technical guidance, pages 8-9, published by the Ministry of Housing, Communities and Local Government, September 2019

Conclusion

13. The appellant has not demonstrated, on the balance of probabilities, that the proposed extension would be permitted development, having regard to the relevant provisions of GPDO. Therefore, in the absence of an express grant of planning permission it has not been demonstrated that the proposed development would be lawful.
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 a loft conversion with dormer extension and rooflights to side roofslopes [sic] 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.

J M Tweddle

INSPECTOR