



Appeal Decision

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2023

Appeal Ref: APP/D0840/X/23/3329467

Owls Cottage, Killiganoon, Carnon Downs, Truro, Cornwall, TR3 6JT

- 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 proposed lawful use or development (LDC).
- The appeal is made by Mr Daniel Lawrence against the decision of Cornwall Council.
- The application ref PA22/10028, dated 9 November 2022, was refused by notice dated 11 September 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which an LDC is sought is described as: 'Extensions and alterations to dwelling'.

Decision

1. The appeal is dismissed.

Appeal Procedure

2. Given this appeal turns on the interpretation and application of law to the proposed development, there is no need to conduct a site visit. A representative of the Inspector has made a recommendation set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. Whether the Council's refusal to issue an LDC was well founded.

Reasons for the Recommendation

4. The proposal is for the alteration of a roof and the appellant must show that the development would fall within the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) Schedule 2, Part 1, Class B. The Council's reason for refusal is that the proposal would fail to comply with the provisions of the Town and Country Planning (General Permitted Development) Order 2015 Schedule 2, Part 1, Class B paragraph B.1(b) (the 'GDPO 2015').
5. Class B paragraph B.1(b) states that development is not permitted by Class B if any part of the dwellinghouse would, because of the works, exceed the height of the highest part of the existing roof.
6. The plans show that the proposed works to the roof would be lower than the highest height of part of the existing roof. However, the appeal parties disagree about the interpretation of B.1(b) when considered against Department's guidance on Permitted Development Rights for Householders Technical Guidance 2019 ('the Guidance').
7. The Guidance is an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO 2015. The Guidance mirrors the language of the text within the GDPO 2015 stating that works will only be permitted development if no part of the house once enlarged exceeds the height of the highest part of the roof of the existing house. It

continues to state that the highest part of the roof of the existing house will be the height of the ridge line of the main roof.

The Council contend that the 'main roof', in this instance, is the roof of the single storey aspect of the dwelling which the proposal seeks to alter. However, article 2 of the GDPO 2015 sets out the interpretation of the word existing as: "*existing, in relation to any building or any plant or machinery or any use, means (except in the definition of 'original') existing immediately before the carrying out, in relation to that building, plant, machinery or use, of development described in this Order*". The word 'original' means: "*...a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date*".

8. The ordinary meaning of 'existing' is clear and when applied to the facts of this case the highest height of the existing roof is measured at the two-storey extension and not at the single storey element of the dwelling house. As such, the proposal meets the limitations as set out in Class B.1(b). That is not the end of the matter, however. For the proposal to be permitted development, it must, however, comply with all the limitations and conditions in Class B.
9. The conditions are set out at B.2 stating that development is permitted by Class B subject to conditions. B.2(b) sets out that the enlargement must be constructed so that (aa) '*the eaves of the original roof are maintained or reinstated*'; and (bb) '*the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves*.' Given the design and layout of the dwelling, it is highly probable that by raising the ridgeline the original eaves will be disturbed. Due to the height increase, the original eaves would not be reinstated. On the basis of the evidence before me, the proposal would fail to comply with condition B.2(b)(1)(aa).
10. For the reasons given above I conclude, on the balance of probabilities, that the Council's refusal to grant a LDC in respect of extensions and alterations to dwelling was well-founded albeit for a different reason. The appeal should fail.

Conclusion and Recommendation

11. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

S Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

12. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

A U Ghafoor

INSPECTOR