



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **21 February 2024**

Appeal Ref: **APP/T2215/X/23/3324746**

39 Stanham Road, Dartford DA1 3AN

- 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 Mr Daniel Pyne against the decision of Dartford Borough Council.
 - The application ref DA/23/00393/LDC, dated 25 March 2023, was refused by notice dated 31 May 2023.
 - 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 on the application form as follows: *'This proposed ground floor rear extension falls under 'Permitted Development' rights in accordance with technical guidance documents from GOV.UK [published September 2019]. The extension depth to be 2.75m from existing rear ground projection and not to exceed either the rear elevation of the existing stepped kitchen or the neighbouring property ground floor extension at 41 Stanham Road. The roof is to be of a pitched design, less than 4m in total height (expected planned height to be 3.5m with a minimum 15-degree pitch slant) with eaves height no higher than existing kitchen eaves. The overall width of the extension to be 3.75m and therefore well under the guidance maximum permitted. Existing RSJ to remain supporting first floor. Wall construction to be of insulated, cavity wall design. Pebble dash render to match existing property. Foundations to be of suitable depth for that of single storey extension type [inc. air bricks]. Damp course to required level. French doors to open out with appropriate lintel [white fascia/double glazed design to match existing property]. Roof tiles/facias/guttering to match existing property (red concrete tile/white facias/black guttering). Appropriate drainage to be installed using a combination of existing soakaway and the inclusion of a water butt for rainwater drainage. All building works to rear of property with existing side access to be used for construction access.'*
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal can be determined without the need for a site visit, as I have been able to reach a decision based on the information already available.
3. Whether an LDC should be granted in respect of the proposal is strictly a matter of fact and law. This means that planning merits considerations, for example the effect of the proposal on the living conditions of occupiers of adjoining residential property, or the effect on the character and appearance of the surrounding area, are not before me in this appeal.

Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, planning permission is granted for the

proposal by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

5. The appeal property contains a two-storey, semi-detached dwelling. The proposal entails erecting a single storey extension with a lean-to roof attached to the rear elevation of the dwelling.
6. Erecting the extension would amount to a building operation, falling within the definition of development set out in s55 (1) of the 1990 Act. Planning permission is required for the carrying out of any development of land, having regard to the 1990 Act at s57 (1). The GPDO at Article 3, Schedule 2, Part 1, Class A grants planning permission for the enlargement, improvement or other alteration of a dwelling. This is subject to the relevant size and locational limitations set out in paragraphs A.1 and A.2 together with the conditions in paragraphs A.3 and A.4 being met.
7. Paragraph A.1 (f) of Class A does not permit the enlargement of a dwelling where (i) it would extend beyond the original rear wall of the dwelling by more than 3 metres, or (ii) it would exceed 4m in height. Paragraph A.1 (j) does not permit an enlargement which would extend beyond a wall forming a side elevation of the original dwelling and (i) exceed 4m in height; (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwelling. Paragraph A.1 (ja) does not permit a total enlargement (being the enlarged part together with any existing enlargement of the original dwelling to which it will be joined) which exceeds or would exceed the limits set out in paragraph A.1 at (e) to (j).
8. For the purposes of the GPDO, 'original' means where the dwelling existed on 1 July 1948, as existing on that date, or if built on or after that date, as so built. A single storey structure with a gabled roof, currently in use as a kitchen, is attached to the side and rear elevations of the dwelling. The Land Registry Title Plan supplied, dated 1964, shows the dwelling having a footprint not dissimilar to that which includes the structure. This could indicate that the structure was attached to the dwelling by that date.
9. Even so, given its date the Title Plan does not represent clear and convincing evidence of the structure having been in existence before 1 July 1948; it is entirely possible that the structure was erected at some stage between July 1948 and 1964. Moreover, it is equally possible that the Title Plan shows the footprint of a previous structure. The structure is not obviously part of the original dwelling, having the appearance of a later addition. Another structure is attached to the rear of the dwelling. This structure has a flat and incorporates a bay window, being used as part of a living room. There is little evidence pointing to when this structure was erected and it also has the appearance of an addition. Therefore, in the absence of firm evidence to indicate otherwise, it is not unreasonable to treat these structures as later additions rather than as part of the original dwelling.
10. According to the appellant, the proposed extension would have a depth of 2.75m. However, this measurement seems to have been taken from the rear wall of the bay window addition i.e., not the original rear wall of the dwelling. Judging from the drawings supplied, I share the Council's view that the distance the extension would protrude beyond the original rear wall is more likely to be in excess of 3m, thus exceeding the limit for a single storey extension to a semi-detached dwelling in paragraph A.1 (f)(i). Besides, the extension would be joined to the existing addition, which protrudes in excess of 3m from the original rear wall. Furthermore, although the extension would be 3.5m high, as the existing addition is around 4.2m in height the total

enlargement exceeds the limit in paragraph A.1(f) (ii). The failure of the extension and of the total enlargement to meet the above limitations does not comply with paragraph A.1 (ja). The Government's Technical Guidance (TG)¹, which assists in interpreting the GPDO, advises that where, as in this case, the proposal would be joined to an existing addition, the limits in paragraph A.1 (f) apply to the size of the total enlargement when assessing whether paragraph A.1 (ja) is met.

11. As the existing addition to which the extension would be joined protrudes beyond a wall forming a side elevation of the original dwelling, paragraph A.1 (j) is also relevant. For reasons similar to those set out in the previous paragraph, the height of the total enlargement does not meet the limit in paragraph A.1 (j) (i). The Council assessed the width of the original dwelling as being around 6.6m and there is little to question the accuracy of that figure. The extension was referred to by the appellant variously as 3.5m and 3.75m wide. When the extension width is added to that of the existing addition the width of the total enlargement would clearly be greater than half that of the original dwelling. This exceeds the limit in paragraph A.1(j) (iii) and also fails to comply with paragraph A.1 (ja). The TG advises that the limits in paragraph A.1 (j) apply to the total enlargement when assessing whether paragraph A.1 (ja) is met. Amendments made to the GPDO in 2020 do not affect the need for the proposal to meet the above limitations.
12. Since the extension would have a single storey, it is not clear how it fails to meet the limitation in paragraph A.1 (j) (ii). The extension meets the other relevant size and locational limitations in paragraph A.1. The condition in paragraph A.3 relating to the use of similar external materials is met and paragraphs A.2 and A.4 do not apply in this instance. Nevertheless, for the proposal to be permitted by the GPDO, it must meet all the relevant limitations and conditions of Class A.
13. Therefore, on the balance of probability the appellant has been unable to show that planning permission is granted for the proposal by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of an express grant of planning permission, the proposal would not be lawful for planning purposes. It is open to the appellant to make such an application, a decision on which would rest with the Council in the first instance.

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 single storey rear extension described in the application 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.

Stephen Hawkins

INSPECTOR

¹ Permitted development rights for householders Technical Guidance MHCLG September 2019