



Appeal Decision

Site visit made on 26 March 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/R3650/X/23/3315443

Rosalie, South Munstead Lane, Godalming GU8 4AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Deabreu against the decision of Waverley Borough Council.
 - The application Ref WA/2022/01967, dated 28 July 2022, was refused by notice dated 21 September 2022.
 - 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 rear ground floor extension with flat roof section and alterations.
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Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision

Procedural matters

1. As the Council point out, the original house features a rear 'offshoot'. The proposed rear extension would attach to that rear offshoot. This leads the Council to the view that the proposed extension should more properly be described as a side and rear extension. I do not agree. The offshoot is located away from any side boundary. The proposed extension would infill the gap between the offshoot and the side of the property. I am therefore satisfied that the description of the proposed development as set out on the application form is accurate. I have determined this appeal on that basis.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (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. 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 Certificate of Lawful Use or Development (LDC) was well founded. 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.

3. The enlargement, improvement or other alteration of a dwellinghouse is permitted by Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Development is not permitted by Class A if it does not comply with conditions set out in that Class. The conditions set out in Classes A1 and A.2 are, in part, relevant to the extension that is proposed. The Council does not suggest that the proposed extension fails to comply with any other parts of Class A. I see no reason to take a different view.
4. Insofar as relevant to this appeal, Class A.1(j) provides 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:
 - (iii) have a width greater than half the width of the original dwellinghouse.
5. Insofar as relevant to this appeal, Class A.2 provides that in the case of a dwelling house on article 2(3) land, development is not permitted if:
 - (b) The enlarged part of the dwelling house would extend beyond a wall forming a side elevation of the original dwelling house.
6. Article 2(3) land includes land within National Landscapes¹. The appeal site is within the Surrey Hills National Landscape. The proposed extension therefore falls to be considered against the condition set out at Class A.2(b).
7. The condition set out at Class A.2(b) refers to the 'original dwelling house'. For the purposes of Class A, the *Permitted development rights for householders: Technical guidance* published by the Ministry of Housing, Communities and Local Government in September 2019 (Technical Guidance) defines 'original' as 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. On 22 October 2001, planning permission was granted for an extension to Rosalie (Council Ref: WA/2001/1575). The approved drawings show that the extension was on the north side of the dwelling, effectively doubling the width of the property but without increasing its depth. The southern 'half' of the building was not altered as part of that development. There is no evidence before me to suggest that the property had been extended prior to that granted planning permission in 2001. Consequently, on the information available to me, the southern half of the building as now existing was the original dwelling house for the purposes of Class A of the GPDO and as defined in the Technical Guidance.
9. The rear extension now proposed is to the southern half of Rosalie. The (south) side elevation of this southern half of the building was the (south) side elevation of the original dwelling house. The (south) side elevation of proposed extension projects rearwards along the line of (south) side elevation of Rosalie. It follows that the proposed rear extension would not extend beyond a wall forming a side elevation of the original dwelling house. The condition at Class A.2 is therefore complied with.

¹ At the time the application subject to this appeal was determined, Article 2(3) land included land within Areas of Outstanding Natural Beauty. On 22 November 2023, all Areas of Outstanding Natural Beauty were re-designated as National Landscapes.

10. The proposed ground floor plan is to a recognised scale but is not fully dimensioned². The width of the proposed rear extension is, however, annotated on that drawing as being 5.3m. The Council give the width of the original dwelling house as 8.9m³. The appellant has not disputed that dimension and my own measurements confirms the dimension quoted by the Council.
11. The corollary is that the width of the proposed rear extension (5.3m) is greater than half the width of the original dwellinghouse (4.45m)⁴. However, the condition at Class A.1(j) is that the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and (iii) would have a width greater than half the width of the original dwellinghouse (emphasis added). The 'and' in Class A.1(j) is operative and the restrictions after the 'and' only take effect when the proposed development extends beyond a wall forming a side elevation of the original dwellinghouse. This is made clear in the Technical Guidance, which on page 22 states that "Where an extension is beyond any side wall, the restrictions in (j) will apply". The obvious inference from this wording is that where an extension is not beyond any side wall, as in this case, the restrictions in (j) will not apply.
12. In this case, the proposed rear extension would not extend beyond a wall forming a side elevation of the original dwellinghouse. Consequently, the requirement after the 'and' that the extension would have a width greater than half the width of the original dwellinghouse does not come into effect. The condition at Class A.1(j) is therefore complied with.
13. The proposed rear extension accords fully with the provisions set out in Class A, Part 1, Schedule 2 of the GPDO and is therefore permitted by that Class.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a rear ground floor extension with flat roof section and alterations was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

15. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Paul Freer
INSPECTOR

² Drawing No. SL/01

³ Council's appeal statement, in the form of a letter to the Planning Inspectorate dated 15 February 2023.

⁴ Being half the width of the southern half of Rosalie.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 July 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed rear extension accords fully with the provisions set out in Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and is therefore permitted by that Class.

Signed

Paul Freer
INSPECTOR

Date: 10th April 2024
Reference: APP/R3650/X/23/3315443

First Schedule

The erection of a rear ground floor extension with flat roof section and alterations, as shown on Drawing Nos SL/01, SL/02, SL/03 and SL/04, all dated June 2022.

Second Schedule

Land at Rosalie, South Munstead Lane, Godalming GU8 4AG

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 10th April 2024

by **Paul Freer BA (Hons) LLM PhD MRTPI**

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Scale: Not to scale

