



Appeal Decision

Site visit made on 9 April 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2024

Appeal Ref: APP/Y3615/X/23/3323064

Manor Farm, Manor Cottage, East Shalford Lane, Surrey, Guildford GU4 8AR

- 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 A Travers against the decision of Guildford Borough Council.
 - The application Ref 23/P/00379, dated 3 March 2023, was part refused by notice dated 26 April 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 the 'Erection of a single storey rear extension and erection of a detached outbuilding.'
-

Decision

1. 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.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. The Council have issued a split decision and consider that the proposed outbuilding is permitted under Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). I agree with the Council's conclusion regarding this element of the proposal, and therefore it is not necessary for me to consider this aspect of the development further.

Main Issue

4. The main issue is whether the Council's refusal in part to grant the LDC was well founded. It is necessary to consider whether the proposed extension would be granted planning permission 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 relates to a detached two storey dwelling. The appellant seeks to establish that the proposed extension would be granted permission by virtue of Class A of Schedule 2, Part 1 of the GPDO. Subject to limitations and conditions, Class A permits the enlargement, improvement, or other alteration of a dwellinghouse. Paragraphs A.1 and A.2 sets out limitations which proposals must adhere to benefit from permitted development rights.
6. The Council determined that the proposed extension fails to meet:
 - Part A.1(j) of Schedule 2, Part 1, Class A of the GPDO.
 - Part A.2(b) of Schedule 2, Part 1, Class A of the GPDO.
7. The relevant restriction under Part A.1(j), states that development is not permitted by Class A if the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and have a width greater than half the width of the original dwellinghouse.
8. Paragraph A.2(b) states that in the case of a dwellinghouse on Article 2(3) land, 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.
9. Article 2 Interpretation (1) of the GPDO defines Article 2(3) land as National Parks, areas of outstanding natural beauty (AONB) and conservation areas etc. The appeal property is located within the Surrey Hills AONB and is thus Article 2(3) land.
10. Article 2 Interpretation (1) of the GPDO defines 'original' as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1 July 1948, as so built.
11. Therefore, the appeal turns on what the original principal elevation is. The Council consider that the northwest elevation, which faces towards the off-street parking area for the dwelling to be the principal elevation. This is primarily due to their interpretation of if the original property based on a planning application from 1961 (Council ref: GUI/5418/1862), together with the presence of the main front door and porch on this elevation and the absence of architectural features on the highway fronting elevation. In contrast the appellant states that the north elevation which faces towards the highway is the original principal elevation. The burden of proof in this matter lies with the appellant.
12. The Government's Technical Guidance (TG)¹ provides a useful guide to interpretation of the GPDO. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for "principal elevation" it states:

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019.

"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 (the main highway will be the one that sets the postcode for the house concerned). 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.

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation."

13. The above guidance makes clear that in "most cases" the principal elevation will be elevation fronting the main highway but also allows for scenarios where this is not the case. It is therefore a matter of planning judgement based on the particular facts of the case.
14. The original property has been extended and altered over the years and therefore it is necessary to look at the planning history to establish the original form and layout of the dwelling. The earliest application dates from the 1960s². The decision notice and drawings is not available for the GUI/5510/18742. However, the proposed drawings, block plan and decision notice for Council ref: GUI/5418/18612 and GUI/6298/19939 have been submitted with this appeal.
15. Although no existing plan has been submitted the block plan which accompanied these applications illustrates that the original property, on the balance of probability, was simple and square in form, with the entrance door to the property positioned on the north-west elevation rather than facing towards the highway. Nevertheless, the original square form of the original dwelling comprised an attractive north elevation facing towards the highway with a simple arrangement of windows at ground and first floor level and a balanced hipped roof above. Furthermore, both application drawings label the North facing elevation fronting the highway as the "North (Front) elevation.
16. In contrast the elevation labelled "West elevation" on these historic plans do not face towards the highway and do not contain a balanced arrangement of fenestrations. In addition, a different porch design is shown on both proposed drawings for applications ref: GUI/5418/18612 and GUI/6298/19939, and no porch is shown at all on the block plan for ref: GUI/5418/18612. As such, whilst this elevation provides the main access for the property, the porch extension shown on these drawings does not appear to be an original feature. Therefore, I do not agree that the west elevation contains the main architectural features of the property. I appreciate that the north (street fronting) elevation does not contain the main front door to the property. However, it is not uncommon for properties to contain their front door in the side elevation.
17. Despite the west elevation containing the main front door of the property and being the elevation approached when entering the dwelling, on the balance of probability, I consider that the north elevation fronting the street, which contains the most attractive and original architectural features, is the principal elevation. Indeed, this is consistent with a previous planning decision by the Council at this site where the decision notice refers to a two-storey extension

² Council ref: GUI/5510/18742, GUI/5418/18612 and GUI/6298/19939.

at the southeast elevation as a side extension³. Therefore, the north-west elevation would also be a side elevation. Reading all the evidence submitted, I find no reason to adopt a different approach.

18. Therefore, the development would not fail to meet the limitations under Paragraphs A.1 (j) and A.2 (b) of Schedule 2, Part 1, Class A of the GPDO, since the enlargement will not extend beyond a wall forming a side elevation.
19. The Council have raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class A of the GPDO, and from my reading of the plans, I find no reason to disagree with these findings.

Conclusion

20. 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 "single storey rear extension" was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

INSPECTOR

³ Council ref: 10/P/00467: Two storey side extensions approved on 5 May 2010.



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 3 March 2023 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 development is "permitted development" falling within Class A and E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

R. Satheesan

INSPECTOR

Date : 19 April 2024
Reference: APP/Y3615/X/23/3323064

First Schedule

Erection of a single storey rear extension and erection of a detached outbuilding.

Second Schedule

Land at Manor Farm, Manor Cottage, East Shalford Lane, Surrey, Guildford GU4 8AR

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: 19 April 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

Land at: Manor Farm, Manor Cottage, East Shalford Lane, Surrey, Guildford GU4 8AR

Reference: APP/Y3615/X/23/3323064

Not to scale:

