



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/22/3309147

Little Romanys, Lawbrook Lane, Surrey, Peaslake GU5 9QW

- 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 & Mrs Taylor against the decision of Guildford Borough Council.
 - The application Ref: 22/P/01091, dated 22 June 2022, was refused by notice dated 17 August 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 the erection of a single storey rear extension.
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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.

Application for costs

2. An application for costs was made by Mr & Mrs Taylor against Guildford Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. 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 appellants must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

4. The main issue is whether the Council's refusal 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.2(b) of Schedule 2, Part 1, Class A of the GPDO. The relevant restriction under 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.
7. 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.
8. 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 1st July 1948, as so built.
9. Therefore, the appeal turns on what the original principal elevation is. The Council consider that the western elevation to be the principal elevation, primarily due to the presence of the gable end and bay window in addition to its position fronting the highway and being the elevation approached when fronting the highway. In contrast the appellants state that the southern elevation which faces onto the largest section of garden, and not the highway, is the original principal elevation. The burden of proof in this matter lies with the appellants.
10. 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:

"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."
11. 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

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

this is not the case. It is therefore a matter of planning judgement based on the particular facts of the case.

12. The existing 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 1950 where planning permission was granted for the 'conversion of garage into additional living accommodation and erection of portable garage'². The proposed plan submitted with that application shows that the pre-existing garage on the west elevation was replaced a drawing room with the garage doors replaced with a new window. I also note that particular window was replaced to form a bay window in a subsequent 2008 planning application. As such the existing ground floor bay window on the west elevation is not an original feature of the property.
13. Furthermore, despite not facing towards the highway, it is clear from the historic plans that the southern elevation, facing towards the garden, provides the main entrance into the property, serving the main hallway where all other rooms are accessed, and also contains the most architectural details which includes windows serving the living areas on the ground floor and well-proportioned traditional dormer windows on the first floor. The original western elevation in contrast only contains the gable end, similar to that of the original eastern elevation, and the pre-existing garage doors.
14. Therefore, despite the west elevation facing towards the highway, on the balance of probability, I consider that the south elevation containing the most prominent and attractive original architectural features is the principal elevation. Indeed, this is consistent with two previous planning decisions at this site where both decision notices refers to the south elevation as the front of the property³. Reading all the evidence submitted, I find no reason to adopt a different approach.
15. Therefore, the development would not fail to meet the limitations under Paragraph A.2 (b) of Schedule 2, Part 1, Class A of the GPDO, since the enlargement would not extend beyond a wall forming a side elevation.
16. 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

17. 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 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

² Council ref: GU/R1254 approved on 19 June 1950.

³ Council ref: 08/P/02081 and 08/P/00697.

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 22 June 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 development is "permitted development" falling within Class A 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/22/3309147

First Schedule

The erection of a single storey rear extension.

Second Schedule

Land at Little Romanys, Lawbrook Lane, Surrey, Peaslake GU5 9QW

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

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Not to scale:

