
Appeal Decision

Site visit made on 4 June 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Appeal Ref: APP/R0660/X/23/3331649

The Bungalow, Pavement Lane, Mobberley, Knutsford WA16 7EJ

- 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 in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Antony Bambury against the decision of Cheshire East Council.
- 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 insufficiently described in the application form. It is mostly encompassed by the Council's decision notice, referring to a single storey rear extension, outbuilding, photovoltaics to outbuilding roof, hard surface (rear terrace), rooflights and other fenestration details [all] as shown on submitted plans; and hip to gable enlargements and rear dormer [roof extension to an existing dwellinghouse].

Summary Decision: the appeal is dismissed.

Main Issue

1. The appeal is against a 'refusal in part' with the Council having certified much of the proposal as lawful. I saw on viewing the site that the outbuilding element is presently under construction. The question arising in the appeal is whether the Council's certificate should be modified: section 195(2) of the Act. However, this question of modification arises only insofar as the Council have refused the application. An outcome less favourable to the appellant than the certificate granted by the Council cannot arise.
2. The application includes the making of extensions and alterations to an existing dwellinghouse, relying on permitted development rights. I am not told that any rights conferred by article 3 of and Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') have been withdrawn.
3. The relevant date for assessing whether the proposal amounts to permitted development is the date of the application, 25 July 2023; and by reference to the Order in the form that it existed on that date. I am not informed of any subsequent amendments to the Order that might materially affect the questions arising here; and have consulted the present form of the Order in considering the matters raised by the appeal.
3. The Council refused to issue a certificate for the 'hip to gable enlargements and rear dormer' element of the proposal. They did so on the basis that

those elements constituted development that was not authorised by the Order; and specifically by exceeding the volumetric thresholds applicable to roof extensions found in Class B of Part 1 of Schedule 2.

Reasons

4. Plans are submitted depicting various works to the dwellinghouse which is an existing detached bungalow with a hipped roof. The proposal is to convert the roof into having side gable ends, and to insert a large dormer window across the rear roof plane. That would join into the flat roofed area of a rear single storey extension below, which is shown to be the full width of the property to the rear but having a pitched roof in part. Part of the existing roof would be removed to accommodate the single storey extension. The side pitches of the roof to that extension would meet the bottom of the rear dormer, join with the plane of the existing rear roof slope, and join the sides of the flat-roofed part of the single storey extension. The rear pitch would join the flat-roofed part of the extension.
5. The permission conferred by Class A to Part 1 does not arise where the proposed development would consist of or include an alteration to any part of the roof of the dwellinghouse. Taking the proposal as a whole, or those parts of it that amount to the enlargement, improvement or alteration of the dwellinghouse itself, permission would not arise under Class A. Nonetheless, although the proposal shows a removal of part of the existing roof in order to build the single storey extension, which would in part constitute an extension to the existing roof, and the plans show that extension not to entirely join into the existing building but in part to the proposed dormer extension, the Council have considered the proposal to be a severable one. Their certificate confirms the lawfulness of the single-storey extension, having considered those works specifically and discretely under Class A.
6. The Council have thus given the hip to gable enlargement and rear dormer separate consideration under Class B. The parties do not agree the cubic content (or 'resulting roof space') arising from the proposed hip to gable and the proposed dormer, and in particular whether this would fall within the 50 cubic metres permitted by Class B. It is difficult to discern whether this is the case. The submitted plans expressly state that dimensions are approximate, and the reader is instructed not to scale from the plan. The existing ridge height, and that of the proposed dormer, are not described by the plans. Any area of the existing conservatory roof space to be lost is not given.
7. The onus of proving that the proposed development would be lawful lies upon the applicant for a certificate. Lawfulness should be demonstrated, to the standard of probabilities. Given the uncertainties described, I am unable to find that this burden is discharged here and so could not be satisfied that the hip to gable and dormer/loft conversion is 50m³ max, as is stated on the plans.
8. A more fundamental objection arises in respect of the omission of the roof of the proposed single storey extension from the appellant's calculations. The

two issues raised are, firstly, whether that extension has any 'roof space'; and secondly, if it does, whether and if so how it should be factored into the volumetric calculations.

9. As to whether any 'roof space' results from the single storey extension, the appellant states that the extension is actually designed as a flat roof, with the sides being 'purely decorative' to give the appearance of a pitched roof. This suggests that what is being proposed is a partly vaulted ceiling to the single storey extension. Save for a very limited extract supplied as part of the appeal statement, no section drawings are provided. The application form describes a 'pitched roof'. The relevant slopes are depicted and described on plans as being a slate roof. On the basis of the information given, what is proposed clearly includes 'roof space' and I have not had to seek any further views about whether a vaulted ceiling does or does not comprise 'roof space'.
10. The question arising in applications of this type is whether the operations described in the application would be lawful if instituted or begun at the time of the application. Thus it is necessary to assume that the whole of the works are begun on that date. Class B permits development consisting of an addition or alteration to the roof of a dwellinghouse but not where the 'resulting roof space' would exceed the cubic content of the original roof space by more than certain tolerances. That resulting roof space means the roof space as enlarged, taking into account any enlargement to the original roof space.
11. The resulting roof space of the proposed works in the application is to include the roof space of the single storey extension. Therefore it needs to be included in the calculation. At the least it is an enlargement of the dwellinghouse with its own roof space that would add to the cubic volume of the original roof for those purposes. Alternatively, and despite the Council's apparent approach to the contrary, the integration of the proposed dormer and single storey extensions means that the roof volumes resulting from the works should be viewed as a whole as an extension to the original roof that exceeds the relevant tolerances.

Conclusion

12. For the reasons given above I conclude that the Council's refusal in part to grant a certificate of lawful use or development in respect of a hip to gable enlargement and the addition of a rear dormer at The Bungalow, Pavement Lane, Mobberley WA16 7EJ 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.

Formal Decision

13. The appeal is dismissed.

Laura Renaudon

INSPECTOR