



Appeal Decision

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05th July 2024

Appeal Ref: APP/T0355/X/23/3328127

Deep Hollow, Golden Ball Lane, MAIDENHEAD, SL6 6NW

- 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 Mrs A Bailey against the decision of Royal Borough of Windsor and Maidenhead.
 - The application ref 23/01700, dated 11 July 2023, was refused by notice dated 20 July 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 development is sought is a single storey side and double storey rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development is detailed in plans that accompanied the appellant's application for an LDC. Having regard to the details provided and the nature of the s192 LDC application, no site visit was deemed necessary. I have determined the case on the evidence before me.

Main Issue

3. The main issue is whether or not the Authority's decision to refuse the LDC was well founded. That turns on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. An application made pursuant to s192 of the 1990 Act (as amended) seeks to establish whether proposed development would be lawful if instituted or begun at the time of the application. The onus is on the appellant to demonstrate on the balance of probabilities that the proposed development is lawful. The matter is one of judgement and based on the details provided within the application.
5. The plans show a development which includes the enlargement of the dwellinghouse through a single-storey side extension on the north-east elevation and a double storey rear extension (north-west elevation). The rear extension includes accommodation within the resultant enlarged roof space and the front roof slope of the proposed side extension is, in part, contiguous with the main roof of the dwelling.

6. There is no dispute between the main parties that the single storey side and double storey rear extensions would meet the relevant criteria set out in Class A of Part 1. Based on the evidence before me, I find no reason to disagree.
7. However, the Council highlights that the associated enlargement of the dwelling as it relates to the additions and alteration of its roof would fail to meet the limitation specified in paragraph B.1 (d) of Class B of Part 1. According to the Council's assessment, in conjunction with a previous extension, the proposals would significantly exceed the specified 50 cubic metre limit. The exceedance of the volume limitation is not contested by the appellant.
8. In support of the appeal, the appellant directs me to wording in the 'Permitted development rights for householders - Technical Guidance' (the guidance). The introductory 'structure of the rules on permitted development' (page 8) highlights that when considering whether a development proposal is permitted development, all of the relevant Parts of the Order (GPDO) and all the Classes within those Parts need to be taken into account. It provides an example where changes to the roof of a house are not permitted development under Class A, but may be permitted development under Class B or C. There is no dispute that that approach is applicable in this particular instance.
9. The appellant additionally highlights an example on page 9. The guidance states 'where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B'.
10. Furthermore, a commentary on page 38 of the guidance clarifies that a conjunction of a roof associated with Class A development with the original roof should not be subject to the projection limit of 150mm set out in Paragraph C.1(b) of the GPDO.
11. While noting that contravention of one class does not mean that it cannot be considered against another, I must be mindful that the guidance is clear in relation to the Class C provisions. It describes that 'Such alterations will not involve any enlargement of the house, but would, for example, cover the installation of roof lights/windows' (also page 38).
12. The proposed rear extension would result in a material alteration to the main roof of the existing dwellinghouse by creating additional volume to it. The roof of the side extension would extend the roof profile. It would also add volume, albeit more limited. Together they fall squarely within the Class B description of an 'enlargement to the dwellinghouse consisting of an addition or alteration to its roof'.
13. Although Class A, as it relates to 2-storey extensions, imposes the additional requirement for the roof pitch of the enlarged part to, so far as practicable, be the same as the roof pitch on of the original dwellinghouse, that does not negate compliance with other relevant Classes in Part 1.

14. Read in conjunction with the wording of Class C which seeks to address 'other' types of alteration following the Class B provisions, and the exclusion to alterations involving any enlargement in the house highlighted in the guidance, I am satisfied that the Council's approach in considering those elements of the extensions under Class B was the correct approach. This is further underscored by reference to enlargements which join the original roof to the roof of a rear or side extension in Condition B.2(b)(ii) and the Interpretation at Paragraph B.4 of Class B. There is nothing in Part 1 to limit the provisions of Class B to dormer windows or other forms of stand-alone roof extension.
15. As there is no dispute that the 50 cubic metre volume limit specified in paragraph B.1(d)(ii) of Class B would be exceeded by the extensions, I find the proposed development is excluded from the provisions of Article 3(1) of the GPDO.
16. In support of the development the appellant refers me to a number of LDC decisions where it is claimed that the Council did not consider all of the relevant Parts of the GPDO and all the Classes within those Parts. However, that does not provide a good reason for departing from the advice in the guidance or considering this s195 appeal other than with due regard to the evidence before me and all the relevant provisions of the GPDO.
17. I am also referred to an appeal decision relating to a two-storey front extension¹. However, limited detail has been provided of the development subject of that appeal proposal in 2010. I am therefore unable to draw conclusions as to the similarities, or otherwise, to the case before me. Notwithstanding, the effective iteration of the technical guidance at that time (published August 2010) contained the same qualification of Class C rights. It also stated that 'Such alterations will not involve any enlargement of the house, but would, for example, cover the installation of rooflights.' Although such decisions are relevant, those decisions are not binding and do not limit the judgement in individual case circumstances based on the evidence provided.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of the single storey side and double storey rear extensions 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).

R Hitchcock

INSPECTOR

¹ APP/C1950/X/10/2137203