

Appeal Decision

Site visit made on 12 August 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024

APP/K3605/X/23/3334347

49 Manor Drive, Esher, Surrey KT10 0AZ

- 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 the decision of Elmbridge Borough Council to refuse to grant a certificate of lawful use or development, (LDC).
- The appeal was made by Mr and Mrs T Yeomanson.
- The application, reference 2023/1059, validated on 6 April 2023, was refused by a notice dated 2 June 2023.
- The application was made under section 192(1)(b) of the Act of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of development is sought is for a First-floor side extension, partial conversion of garage into living space and alterations to fenestration.

Summary of Decision: A certificate of lawfulness is not issued.

Appellants' proposal

1. The Appellants, Mr and Mrs T Yeomanson, wish to build a first-floor side extension, to partially convert the garage into living space and make alterations to the fenestration at their detached 2 storey house, No. 49 Manor Drive, Esher. They would extend their home by raising the south-eastern side roof, (described as a cat slide roof - a roof that continues down below the main eaves height), to provide a full height dressing room and shower for the enlarged rear bedroom. Associated internal works would be carried out.

Permitted Development Order

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, (the Order), at Article 3, Schedule 2, Permitted development rights PART 1 Development within the curtilage of a dwellinghouse allows, at *Class A – the enlargement, improvement or other alteration of a dwellinghouse*. *Class B – additions etc to the roof of a dwellinghouse* allows the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Each Class is subject to limitations and conditions.
3. The Ministry of Housing, Communities and Local Government Permitted development rights for householders Technical Guidance at page 8 says: "*In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal.*".

Considerations

4. Mr and Mrs T Yeomanson said their home improvement scheme should be considered only as a Class B project to the Order for the enlargement of a dwellinghouse as it was to be an addition or alteration to its roof.
5. The Council said Classes A and B were applicable to the appeal project. That was because the enlargement would make alterations to the existing roof providing additional habitable accommodation below the roof at first floor level. It was more than an alteration of the roof. The dwelling below the roof would be extended. The scheme was not permitted by Class A as the project would not comply with Class A.1(i) - development is not permitted where the enlarged part of the dwellinghouse would be within 2m of the boundary of the curtilage of the dwellinghouse where the height of the eaves of the enlarged part would exceed 3m.
6. In my view, the Council were right to conclude that the appeal project should comply with the conditions and limitations of both Class A and Class B. It would not just be the building of a dormer into the existing low roof at the side of the house. It would also produce new full height dressing and shower rooms to replace the existing substandard space under the low cat slide roof, which section of roof would be replaced by new roofing. The work would amount to an enlargement of the existing dwelling, by adding additional extra full height accommodation to part of the first floor.
7. The proposed first floor side extension would be less than 2m from the side of the curtilage of the dwellinghouse, with an eaves height in excess of 3m, the limitation set out at Class A.1(i). It would thereby not comply with Class A to the Order. Where any part of the proposed scheme is outside the limits of the Order, the whole development would not be permitted by the Order. An application to the Local Planning Authority would be required.
8. Class B of the Order permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Although the Council said the appeal scheme was not permitted by condition B.2(b)(ii), proposed scheme plan 22/49/02 dated November 2022 shows a 200mm set back of the proposed roof extension from the existing eaves, indicating compliance with condition B.2(i)(bb).

FORMAL DECISION

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawfulness for the proposed first-floor side extension, partial conversion of garage into living space and alterations to fenestration at No. 49 Manor Drive, Esher was well-founded and that the appeal should not succeed. I exercise the powers transferred to me under s.195(3) of the 1990 Act as amended accordingly.

John Whalley

INSPECTOR