

# Appeal Decision

Site visit made on 10 July 2024

**by T Shields DipURP MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 August 2024**

---

**Appeal Ref: APP/Y3615/X/23/3326218**

**22 Glendale Drive, Guildford, GU4 7HX**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs Birgul Guven Catalbas against the decision of the Guildford Borough Council.
  - The application, Reference 23/P/00758, dated 3 May 2023, was refused by notice dated 28 June 2023.
  - The application was made under section 192(1)(b) of the Act.
  - The development for which a certificate of lawful use or development is sought is:
    - 1- a single storey rear extension, extending no more than 3 metres beyond the rear wall of the original dwellinghouse (maximum height 3.325m, eaves height 2.400m) which falls under Part 1, Class A of Permitted Development rights;
    - 2- installation of 3 No. rooflights which falls under Part 1 Class C of Permitted Development rights.
- 

## Decision

1. The appeal is dismissed.

## Reasons

2. In an application for a LDC the onus is on the applicant, now appellant, to demonstrate on the balance of probabilities that the proposed development would be lawful. If there is no contradictory evidence from others to make her case less than probable, there is no reason to dismiss the appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
  3. No. 22 Glendale Drive is a semi-detached two storey dwellinghouse. To its northern side is a single storey garage and passageway. The passageway forms a corridor between the internal garage wall and the side wall of the house and runs from front to rear with pedestrian front access gate and rear door. Externally the whole structure, as described, is a single structure linked to the side elevation of the house.
  4. The proposed extension subject of the appeal, following part demolition of existing walls, would project from the side wall of the house and further back from the line of the existing rear wall of the garage/passageway. The three rooflights referred to would be integral elements of the completed development.
  5. The main issue in the appeal is whether the Council's decision to refuse a LDC was well-founded. This turns on whether the proposed extension benefits from the planning permission ("permitted development") granted by Article 3 and
-

Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended ("the Order").

6. The parties agree the extension would meet all conditions and limitations of Class A such that it would be permitted development, other than in respect of the limitation at Class A.1(j)(iii), which is in dispute. I also agree there would be no conflict with the undisputed parts of Class A.
7. The relevant part of the limitation at A.1(j)(iii) excludes from being permitted development an enlargement of a dwellinghouse where it would "*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. The term "original" in relation to a building is defined in Article 2 of the Order to mean the building "as existing" on 1 July 1948, or, if built on or after that date "as so built". Interpretation of A.1(j)(iii) is also explained in the TG<sup>1</sup> to the Order. It states that any extension cannot be more than half the width "*of the original house*".
9. It is clear from the submitted drawings that at least the rearmost part of the proposed extension would extend off an original side wall (currently the kitchen). However, whether the proposed enlargement would or would not have a width exceeding the limitation at (j)(iii) is dependent upon whether the existing garage/passageway forms part of the "original dwellinghouse".
10. The appellant has submitted images of the property, the earliest dating from 2009, which show the house and garage linked as a single structure, as exists now. However, the Council has submitted extracts of location plans taken from Ordnance Survey maps approved as part of planning permissions granted at nearby dwellings in 1986 and 1988. These also show the layout of No. 22 and both show the garage as being separate from the house, indicating that it was linked later by the incorporation and covering over of the side passageway.
11. The appellant suggests these location plans are inaccurate, and that greater reliance should be placed upon the general pattern of development in the area shown within them, of dwellinghouses with attached garages.
12. While I accept that map and plan data can contain inaccuracies, the two submitted by the Council were from two different sites in two different years, both showing a separate garage, and both pre-date the appellant's imagery by more than 20 years. Also, while I accept the appellant's description of the general pattern of development in the area at the time, the plan extracts also indicate houses with separate garages and houses with no garages. In my view the era of traditionally constructed houses, such as No.22, would typically have seen houses built with no garage, or with a garage directly attached to the house, or with a separate garage and an open passageway between to give pedestrian access to the front and rear.
13. I also acknowledge that the uniformity of materials used in the exterior and the roof over the garage/passageway appears to indicate a single building operation. However, that only relates to its current form and appearance, it does not provide convincing evidence that the garage was not originally constructed separately with an open passageway.

---

<sup>1</sup> Permitted development rights for householders - Technical Guidance, MHCLG 2019

14. Overall, the appellant's evidence is not sufficiently precise and unambiguous and is contradicted by the Council's evidence. On the balance of probabilities I find that the garage was originally built separately to the main dwellinghouse.
15. The existing garage therefore cannot be included as part of the original house for the purposes of Class A. As such, the width of the proposed enlargement would have a width greater than half the width of the original dwellinghouse exceeding the limitation at Class A.1(j)(iii), and cannot benefit from the planning permission granted by the Order. Hence, it could not be carried out lawfully as permitted development, or in the absence of any other planning permission being granted.

### **Conclusion**

16. For these reasons I conclude that the Council's refusal to grant a LDC in respect of the proposed development at 22 Glendale Drive, Guildford, GU4 7HX, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

*Thomas Shields*

INSPECTOR