



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2024

Appeal Ref: APP/K3605/X/24/3336322

37 Fernihough Close, Weybridge, Surrey, KT13 0UY

- 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 Mr Arno Melchior against the decision of Elmbridge Borough Council.
 - The application ref 2023/2238, dated 8 August 2023, was refused by notice dated 6 October 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 use or development is sought is the installation of 10 solar panels at the front roof (west facing) of 37 Fernihough Close.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the determination of the appeal depends on matters of law, a site inspection is unnecessary. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
3. For the avoidance of doubt I should explain that the planning merits of any operations are not relevant and therefore not an issue from which considering the context of appeal under section 195, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

4. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well-founded. In particular this depends upon the interpretation of Schedule 2, Part 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).

Reasons

5. The proposed development is the installation of solar panels on the roof of the house located in a cul-de-sac within the Brooklands Conservation Area. The appellant considers that the proposed development is permitted under Schedule 2 of the GPDO, Part 14 of which permits the installation of solar PV equipment on a dwellinghouse subject to not breaching certain limitations, the relevant ones in this case being:

(a) the solar PV equipment would protrude more than 0.2 metres beyond the plane of the wall or in the case of the pitched roof, the roof slope when

measured from a perpendicular with the external surface of the wall or pitched roof slope;

(b) in the case of a solar PV equipment on the pitched roof, it would result in the highest part of the solar PV equipment being higher than the highest part of the roof excluding any chimney;

(c) in the case of land within a conservation area or which is a World Heritage Site, the solar PV equipment would be installed on the wall which fronts a highway.

6. The application for the LDC was for the installation of some 10 panels on the front west-facing roof, but submitted details from EERenewables indicated an additional two panels on the south facing roof and three panels on the east facing roof. The EERenewables document indicate the dimensions of the proposed panels being 1722 x 1134mm (plus or minus a tolerance of 2mm) x 30mm deep (plus or minus a tolerance of 1mm). The technical specification indicates that the panels do not breach 200mm past the ridge line.
7. The Council points out as the application was for 10 panels on the front roof, this conflicted with the EERenewables document that referred to 15 panels. Furthermore the appellant had failed to demonstrate the dimension of the projection of the panels above the roof slope or whether they would be higher than the highest part of the roof. On this basis, the application information was considered to be insufficient and lacked clarity.
8. The appellant states that reference to only 10 panels was a misunderstanding on the basis of information from a neighbour and despite seeking advice from the Council nothing was received that assisted the appellant in making the application. Reference is made to a successful application for an LDC for solar panels at 33 Fernihough Close (2022/0176), the details of which I have noted.
9. The EERenewables document is misleading in the sense that it refers to 'systems fit within parameters and not breaching 200mm past the ridge line' whereas the GDPO limitation refers to the panels not being higher than the highest part of the roof. Although the diagrams show the panels below the ridge line, the absence of a statement or diagram showing that the panels would not protrude more than a perpendicular distance of 0.2m from the roof slope makes the submitted information ambiguous.
10. As the panels are proposed on the roof and not on a wall fronting a highway, the limitation in respect of the conservation area is not breached.
11. There is no power for the Council, or Inspector to modify the terms of an LDC application. It is for the appellant to propose the use or operation for which they wish to ascertain its lawfulness. However, the terms may in practice be modified by the appellant or where they agree. In some cases, the Council and appellant may have agreed a modified description or plans and the appeal has gone forward on that basis. However, there is no specific reference by the parties that a modified description has been agreed in this case although the appellant's details of the appeal refer to 'Installation of solar panels on the roof of a dwelling which is located in a conservation area.' In the absence of any agreement, it is not possible for me to modify the application to embrace the 15 panels, but even were I able to do so, the submitted information would still remain ambiguous.

12. I note that the Council acknowledge that the solar panels may comply with permitted development rights but stress that the application must be lawful if begun at the time of the application.
13. Whilst the application fails to be specific about the upstand of the panels being no more than 0.2m, I cannot attach conditions to an LDC restricting its size to those set out in the GDPO limitations.
14. The lack of clarity in the submissions does not satisfy the onus of proof that rests with the appellant to show on the balance of probabilities that the proposed development would have been lawful at the time the application was submitted.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the installation of solar panels on the roof of a dwelling 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).

P N Jarratt

INSPECTOR