



Appeal Decision

Site visit made on 25 February 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Appeal Ref: APP/Y3615/X/24/3348841

2 Mangles Road, Guildford, Surrey GU1 1QF

- 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 B Patel against the decision of Guildford Borough Council.
 - The application ref 24/P/00579, dated 13 April 2024, was refused by notice dated 30 May 2024.
 - 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 erection of a single storey side extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) at Article 3, Schedule 2, Part 1, Class A.

Reasons

3. The burden is firmly on the appellant to show that an LDC should be granted for the proposal, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a modern two-storey, three-bedroom dwelling. The dwelling fronts onto a residential cul-de-sac and is attached to the rear of shop premises. The first floor of the dwelling extends over part of the shop. The residential garden is at the side of the dwelling. The garden, which is enclosed by tall fencing, tapers as it extends further from the side wall of the dwelling.
5. The proposal involves erecting a single storey extension at the side of the dwelling, to provide an enlarged kitchen.
6. Article 3, Schedule 2, Part 1, Class A of the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwelling, provided all the size and locational limitations in paragraphs A.1 and A.2 and the conditions in paragraphs A.3 and A.4 are met, where relevant. Of particular relevance in this case is paragraph A.1(b), which states that development is not permitted by Class A where, as a result of the works, the total ground area covered by buildings within the curtilage of the dwelling (other than the original dwelling) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwelling).
7. There is no statutory or authoritative definition of the term 'curtilage.' The curtilage is not the same as the planning unit (although the two may often coincide), nor is it a use of land. Generally, to be within the curtilage it is enough that land serves the

purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. The Government's Technical Guidance¹ explains that the curtilage is land which forms part and parcel with the dwelling.

8. The Council confirmed that when assessing the curtilage of the dwelling, no part of the shop was included. Rather, the Council focussed on a triangular shape strip of land located between the dwelling and the cul-de-sac. Although the appellant considered that the strip is within the curtilage, there is significant doubt over whether it forms part and parcel with the dwelling. Even if the strip is in the appellant's ownership, it does not seem to serve the dwelling in any reasonably necessary or useful manner. The strip has little obvious functional relationship to the dwelling. It is roughly hard surfaced, has a neglected appearance and is physically separate from the garden, being accessible only from the cul-de-sac. In physical and visual terms, the strip is largely assimilated with the pedestrian pavement. Accordingly, based on the available evidence and as a matter of fact and degree, I am not persuaded that the strip forms part of the curtilage of the dwelling.
9. The uncertainty over the extent of the curtilage has significant consequences for whether the proposal would be granted planning permission by the GPDO. If the strip is not included, it is highly likely that following erection of the extension the total area of the ground covered by buildings within the curtilage excluding the original dwelling would be much greater than the 45% figure calculated by the appellant. In any event, the strip is likely to be significantly smaller than indicated on the appellant's drawings; in my estimation the dwelling is much closer to the back edge of the pavement than that shown. As a result, I cannot reasonably be assured that the proposal would leave at least 50% of the curtilage of the dwelling not built on so as to meet the limitation in paragraph A.1(b).
10. I am satisfied on the available evidence that the proposal would meet the other relevant limitations in paragraph A.1, that the conditions in paragraph A.3 would be complied with where relevant and that the limitations and conditions in paragraphs A.2 and A.4 respectively would not be applicable. Nevertheless, development which exceeds any of the limitations in Class A cannot be permitted by the GPDO.
11. Consequently, based on the available evidence the appellant has been unable to show that planning permission is granted for the proposal by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of an express grant of planning permission, the proposal would not be lawful.

Conclusion

12. 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 proposal 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).

Stephen Hawkins

INSPECTOR

¹ Permitted development rights for householders: Technical Guidance MCHLG September 2019