



Appeal Decision

Site visit made on 18 March 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/K3605/X/23/3325313

58 Speer Road, Thames Ditton, Surrey KT7 0PW

- 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 J Davis against the decision of Elmbridge Borough Council.
 - The application ref 2023/0317, dated 1 February 2023, was refused by notice dated 16 May 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 a hip to gable conversion with construction of a rear dormer.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Whether an LDC should be granted in respect of the proposal is strictly a matter of fact and law. Therefore, planning merits considerations cannot form any part of my deliberations.

Main Issue

3. 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 B.

Reasons

4. 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.
5. The appeal property contains a two storey, semi-detached dwelling. The dwelling has a hipped roof form, with the main part of the roof sloping inwards towards the highest part and a smaller section of roof over an outlier at the side of the dwelling which slopes inwards to a lower roofline.
6. The proposal involves enlarging the main part of the sloping roof at the side to form a side wall flush with that of the existing dwelling, along with the erection of a box dormer which would encompass most of the extended rear roof.
7. The GPDO at Part 1 Class B grants planning permission for the enlargement of a dwelling consisting of an addition or alteration to its roof, provided that the limitations in paragraph B.1 and the conditions in paragraph B.2 are all met, where relevant.

8. The GPDO does not define what constitutes a hip-to-gable enlargement. However, the term is commonly understood as meaning the enlargement of a sloping side roof to form a vertical gable end. Although various similar dictionary definitions exist, a gable might generally be described as the upper part of the end wall of a building, between the two sloping sides of the roof, that is shaped like a triangle.
9. I share the Council's concern that the proposal would not form a gable in the generally accepted sense. The hipped roof would be retained over the outlier. The roof enlargement would be physically attached to the outlier roof. The vertical part of the roof enlargement would be set back from the hipped end of the outlier roof. As a result, the end of the enlarged dwelling would not all be in a vertical plane, nor would it form a complete triangle between the sloping sides of the roof. This leads me to find that, as a matter of fact and degree, the proposal would not involve a hip-to-gable enlargement.
10. The foregoing has consequences for whether the proposal would be granted planning permission by Class B. Where no hip-to-gable enlargement is involved, to fall within Class B additions or alterations to the roof of a dwelling must comply with the condition at paragraph B.2(b)(i). Amongst other things, this requires the eaves of the original roof to be maintained or reinstated and for the edge of the enlargement closest to the eaves of the original roof to be at least 0.2m from the eaves, as far as practicable. By not reinstating the eaves at the side and incorporating the required set back, the proposal would not comply with this condition.
11. In any event, although the proposal might itself not exceed 50m³, the extent to which the original roof space has already been enlarged following previous additions to the dwelling is unclear. Accordingly, there is also no reasonable assurance that the proposal would not lead to the resulting roof space exceeding the cubic content limit in paragraph B.1(d)(ii) of Class B.
12. I am satisfied on the available evidence that the proposal would meet the other relevant limitations in paragraph B.1 and that the other conditions of paragraph B.2 would be complied with, where relevant. Nevertheless, development which exceeds any of the limitations and conditions in Class B cannot be permitted by the GPDO.
13. Consequently, based on the available evidence the appellant has been unable to show to the required standard that planning permission is granted for the proposal by the GPDO at Article 3, Schedule 2, Part 1, Class B. It follows that in the absence of an express grant of planning permission the proposal would not be lawful.

Conclusion

14. 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