



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12th May 2025

Appeal Ref: APP/R0660/X/24/3343737

12 Elmsway, Bollington, SK10 5NP

- 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 Rebecca Hollingworth against the decision of Cheshire East Council.
 - The application ref 24/0908M, dated 8 March 2024, was refused by notice dated 26 April 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 development is sought is described as 'Two storey rear extension. A single storey side extension. A front porch extension.'
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. Based on the evidence submitted and the matters in dispute, a site visit has been deemed to be unnecessary. The parties have been given the opportunity to comment on proceeding with the appeal without a site visit and no comments were received. I am satisfied that a decision can be made without a physical inspection of the appeal site.
3. The Council issued a split decision with regard to the application for a Lawful Development Certificate (LDC) on the 25 April 2024. As the Council granted an LDC in respect of the elements of the application other than the two storey rear extension the appeal is limited to the part of the application that was refused.

Main Issue

4. The main issue is therefore whether the Council's decision to refuse to grant an LDC for the two storey rear extension (the development) was well founded.

Reasons

5. In order for an LDC to be granted in respect of the development, the onus is on the appellant to show on the balance of probabilities that the development would be lawful. The relevant date for determining lawfulness is the date of the application.
6. The appellant maintains that the development would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), on the basis that it would have constituted 'permitted development' under Part 1, Class A of Schedule 2 of the GPDO (Class A). The burden of proof lies with the appellant, on the balance of probabilities, to demonstrate that the development would have been lawful on the date that the application was made.

7. Class A sets out that the enlargement, improvement or other alteration of a dwellinghouse is permitted development subject to the development not being excluded under any of the criteria set out in paragraph A.1. The area of dispute between the parties is limited to whether the proposed development is in breach of A.1.(d) as the parties agree that the development meets the other criteria.
8. Paragraph A.1.(d) states that development is not permitted if the height of the eaves of the part of the dwellinghouse being enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. The appeal property is a semi-detached dwelling with a low pitched roof with overhang containing dormers to the front and rear.
9. The Council assessed the existing dwellinghouse as having a single set of eaves where the edge of the pitched roof with overhang meets the outside wall. On that assessment, the development failed to comply with Paragraph A.1.(d) as the height of the eaves of the development would be around 4.5 metres which would exceed the height of the eaves to the pitched roof at around 2.75 metres.
10. However, the appellant maintains that there is second set of eaves at the dwelling where the flat roof of the rear dormer meets the outside wall of the dormer at a height of around 5.3 metres from ground level. If that is the case, then there would be compliance with Paragraph A.1.(d) as the development would not exceed the height of the eaves of the existing dwellinghouse. The parties agree that where there is more than one set of eaves, it is the highest point of eaves that is taken into account in measuring heights.
11. There is no definition of 'eaves' in either the GPDO or Permitted development rights for householders - technical guidance' 2019 (the Guidance). Neither party has referred to any definition of eaves or any relevant case law although the Council states that the dormers do not have eaves 'in any typical sense.' The Oxford English Dictionary defines eaves as the part of a roof that meets or overhangs the walls of a building and notes that they usually project beyond the side of the building. The appellant relies upon wording in the Guidance and the location of the rear dormer to show that the rear dormer has eaves.
12. The Guidance for Class A.1(d) states 'for the purpose of measuring height, the eaves of the house are the point where the lowest point of a roof slope or a flat roof meets the outside wall.' The appellant considers the outside wall of the rear dormer to be a continuation of the ground floor wall below and the point where this wall meets the flat roof of the dormer is the eaves. However, the wording addresses the measuring of eaves rather than what constitute 'eaves' prior to any measuring exercise taking place. In any event, whether an outside wall is a continuation of the outside ground floor wall is not a determining factor for either measuring eaves or establishing where the eaves are located on a dwelling.
13. Relying upon the wording in the Guidance, the appellant sees a distinction between the front dormer as a typical flat roof dormer and the rear of the dwelling which is of 'two storey construction with a flat roof and not a 'typical dormer''. The plans and photographs provided show the front and rear dormers with flat roof elements with no projection within the pitched roof of the dwelling. Whilst the dormers are not the same, they are nevertheless identifiable as dormers and the differences between them do not support the appellant's view that the rear dormer has eaves due to those differences.

14. Taking into account all of the evidence before me, the appellant has not discharged their burden of proof, on the balance of probabilities, to show that there are eaves on the rear dormer. As the height of the eaves of the development would exceed the height of the eaves of the pitched roof of the existing dwellinghouse, the development does not fall within Class A as it fails to meet all of the relevant criteria.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the two storey rear extension at 12 Elmsway, Bollington SK10 5NP was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Griffin

INSPECTOR