
Appeal Decision

Site visit made on 30 January 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 21 February 2019

Appeal Ref : APP/X1735/X/18/3196308

Land at 4 Yateley Close, Havant, Hampshire, PO9 4DH.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC) by Havant Borough Council dated 11 December 2017.
- The appeal is made by Mrs Christine Taylor.
- The application ref. APP/17/01180 was dated 1 November 2017.
- The application was made under section 192 (1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is (proposed) partial two storey rear extension and first floor rear extension (over the existing ground floor single storey extension).

Summary of Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The appeal site is a two storey dwellinghouse located within a terrace of four similar properties in a residential area. The application the subject of this appeal is a proposed partial two storey rear extension and first floor rear extension (over the existing ground floor single storey extension).
4. Planning permission is granted by virtue of permitted development rights in the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) for certain types of development subject to specified conditions and limitations.

5. The Council's reason for refusal of the application is that the proposed works do not satisfy Class A of Schedule 2 Part 1 of the GPDO. The Appellant argues that the proposal should be assessed against Class B and not Class A. The decision notice refers to firstly to non compliance with Class A.1 (k) (iv) and secondly non compliance with Class A.3 (a). During the course of the appeal the Council has withdrawn its second reason for refusal following receipt of information about the materials to be used in the exterior work. I shall therefore only consider the first reason for refusal in this decision.
6. Class A.1 (k) (iv) says that Class A does not apply if the works consist of or include an alteration to any part of the roof of the dwellinghouse. But it is generally held that non-compliance with A.1(k)(iv) does not prevent the whole of the extension from being permitted development, it merely means that the extension must be assessed against Classes B or C. This view is supported by the Government's Permitted Development for Householders : technical guidance (the Technical Guidance). Whilst this is only guidance and does not have the legislative status of the GPDO itself it does set out the Government's view as to how the GPDO should be interpreted and I attach weight to it. It confirms that when considering whether a proposal is permitted development all of the relevant Parts of the rules and all of the Classes within those Parts need to be taken into account. It states that changes to the roof of a house are not permitted development under Class A but may be permitted development under Class B or C. It gives the example of a two storey rear extension with a roof joining onto the main roof of the original house and advises that the works would need to meet the requirements of both Class A (enlargement of the house) and Class C (any alterations to the roof). It goes on to say that if the works also include the creation of a dormer window to enlarge the roof space then the works would need to meet the requirements of Class B. I see no reason not to apply this Guidance.
7. In this case the proposal includes a rear extension which would be attached to the main dwelling. It is therefore an enlargement of the dwellinghouse and appropriate to apply Class A to the proposed works. Other than the argument concerning A.1(k)(iv) there is no dispute as to any non compliance with other aspects of Class A and I have no reason to conclude otherwise.
8. Applying the Guidance above I shall now consider the changes to the roof. Class B permitted development rights relate to 'the enlargement of a house consisting of an addition or alteration of its roof'. Class C permitted development rights relate to any other alteration to the roof of a dwellinghouse. In this case there is an enlargement of a dwellinghouse consisting of an addition or alteration to its roof and therefore it is necessary to apply Class B.
9. Although the Council does not agree that Class B is engaged they argue that the conditions in Class B.2 (b)(i) (aa) and (bb) are not met. But these restrictions only apply if Class B.2 (b) applies on the facts. Class B.2 (b) does not apply to a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension. In this case the proposed works join the original roof to a rear extension. Therefore it follows that the restrictions in B.2 (b)(i) (aa) and (bb) are not relevant.

10.I find that Class A and Class B are met and the proposal benefits from permitted development and does not require planning permission.

11.For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of (proposed) partial two storey rear extension and first floor rear extension (over the existing ground floor single storey extension) at 4 Yateley Close, Havant, Hampshire, PO9 4DH was not well-founded, and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

12. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

S. Prail

Inspector



LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by the Planning and
Compensation Act 1991)

IT IS HEREBY CERTIFIED that on 1 November 2017 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked in black on the plan attached to this certificate would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed development would have been permitted development by virtue of article 3(1) and Schedule 2 Part 1 Class A and Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It does not therefore involve development requiring planning permission.

The development does not contravene the requirements of any enforcement notice in force.

S. Prail

INSPECTOR

Date: 21 February 2019

Reference: APP/X1735/X/18/3196308

First Schedule

Proposed partial two storey rear extension and first floor rear extension (over the existing ground floor single storey extension) the subject of application reference APP/17/01180 including drawing no KALO-0183-01-Rev A.

Second Schedule

Land at 4 Yateley Close, Havant, Hampshire, PO9 4DH.

NOTES

This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.

It certifies that the uses/operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the uses/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 February 2019

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Not to Scale

