

Appeal Decisions

Site visit made on 9 November 2015

by Sukie Tamplin DipTP PG Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 December 2015

Appeal A: APP/X1735/X/15/3017604

109 Hulbert Road, Havant, Hampshire PO9 3TD

- 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 certificate of lawful use or development (LDC).
- The appeal is made by Mr A Graham against the decision of Havant Borough Council.
- The application Ref APP/14/00837, dated 12 August 2014, was refused by notice dated 9 January 2015.
- 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 enlargement of roof.

Summary of Decision: The appeal is dismissed

Appeal B: APP/X1735/X/15/3017616

109 Hulbert Road, Havant, Hampshire PO9 3TD

- 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 certificate of lawful use or development (LDC).
- The appeal is made by Mr A Graham against the decision of Havant Borough Council.
- The application Ref APP/15/00094, dated 26 January 2015, was refused by notice dated 24 March 2015.
- 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 alterations to roof of existing dwelling - resubmission of APP/14/00837.

Summary of Decision: The appeal is dismissed

Appeal C: APP/X1735/X/15/3133039

109 Hulbert Road, Havant, Hampshire PO9 3TD

- 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 certificate of lawful use or development (LDC).
- The appeal is made by Mr A Graham against the decision of Havant Borough Council.
- The application Ref APP/15/00733, dated 30 June 2015, was refused by notice dated 20 August 2015.
- 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 construction of dormer in side roof of house.

Summary of Decision: The appeal is dismissed

Application for costs

1. An application for costs was made by Mr A Graham against Havant Borough Council. This application is in connection with Appeal C and is the subject of a separate Decision.

Procedural matters and background to the 3 appeals

2. The three applications have been made under S192 of the Town and Country Planning Act 1990 as amended (the Act). However the decision notices refusing the lawful development certificates (LDC) each refer to S191 of the Act. There is no dispute that the developments have not taken place and all the schemes before me refer to proposed development. Therefore I have dealt with these appeals on the basis on the original applications and submitted plans.
3. Applications for LDCs are determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. Appeals A and B therefore are considered against the criteria, limitations and conditions of the Town and Country Planning (General Permitted Development) Order (GPDO) 1995¹. Appeal C is considered against the provisions of the 2015 GPDO².
4. It was not necessary to view the appeal site from neighbouring property as the effect on amenity is not a matter that I can take into account. This is because the consideration of the planning merits of the proposed developments is outside the scope of these appeals.
5. The appeal property is a 2 storey detached house, located to the south east of Hulbert Road. The house, in common with neighbouring property is asymmetrical with an integral garage to one side and the pattern of development hereabouts comprises mirrored pairs, with the position of the garage alternating from one side to the other. The garage is covered by a continuation of the main hipped roof and is referred to by the parties as a 'cat slide roof'. From what I have seen and read the garage 'extension' is part of the original dwelling. For the purposes of these appeals the parties agree that the proposed schemes would not result in an enlargement in excess of 50 cubic metres.
6. The *Permitted development for householders: Technical Guidance* (TG)³ provides an interpretation of Part 1 of the GPDO. This says that when considering whether a development proposal is permitted development, all the relevant part of the rules and all the Classes within those Parts need to be taken into account.

Reasons

Appeal A

7. The appellant describes the proposal as a 'hip to gable enlargement of the roof' and says that any determination should be made in the light of Schedule 2,

¹ The Town and Country Planning (General Permitted Development) Order 1995 as amended by the No.2 Amendment (England) Order 2008 and Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014

² The Town and Country Planning (General Permitted Development) Order 2015.

³ *Permitted development for householders: Technical Guidance* Department for Communities and Local Government: Updated April 2014:

Part 1 Class B of the GPDO. Class B sets out the permitted development rights for works involving the proposed 'enlargement of a dwelling house consisting of an addition or alteration to its roof'. There is no doubt that the proposed development would include works that alter or add to the existing roof. I shall come back to this finding below.

8. The Council disagrees that Class B applies and says that the proposed development should be considered under Class A of Part 1 because a more accurate description of the proposed works would be a first floor addition above the existing single storey garage. Consequently the works seek to provide first floor accommodation, which would extend the main elevations and with a new pitched roof which would then link into the hipped roof of the existing dwelling. Accordingly the proposed works are, on any reasonable interpretation, more than alterations or additions to the roof.
9. I favour the Council's reliance on Class A because Class B refers to development that would consist almost entirely of an addition or alteration to the roof. In this case the works to the roof above the garage would be works of demolition which, as a matter of fact and degree, can be distinguished from the term addition or alteration. This interpretation is in line with the TG which illustrates alterations to the roof only. Moreover the criteria, limitations and conditions in Class B are concerned with works to the roof and not other alterations to the dwellinghouse. The works subject of the appeal do not simply alter the roof but also involve the removal of the lower section of the roof currently over the garage, the construction of walls to enclose additional accommodation and a new section of roof and gable extending across the new extended first floor accommodation.
10. Furthermore the alterations to the roof would be in association with the enlargement of the dwelling, and would not be the primary development. In other words, the alterations to the roof would be dependant on the enlargement of the dwelling and could not be implemented without the extended first floor. For these reasons I do not agree with the appellant that the core works comprise 'an addition or enlargement to the roof' of the dwelling. The TG says that where a proposed extension has a roof that joins onto the main roof of the house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and in the case of an enlargement of the roof space, it would need to meet the requirement of Class B. Thus even if the development met the criteria in Class B, that would not, on its own, be sufficient to demonstrate that the development comprising an enlargement of the dwellinghouse and roof alterations would be permitted development under the provisions of the GPDO. I therefore conclude that the proposed development should be assessed in the light of Class A.
11. Class A of the Schedule permits the enlargement, improvement or other alteration of a dwellinghouse subject to specified criteria set out in the GPDO (2008). However, such development is not permitted in the circumstances itemised in paragraph A.1 (g) In this case the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse⁴ and the height of the eaves of the enlarged part would exceed 3 metres.

⁴ Plan drawing ref 3 (existing floor plans and elevations) gives a figured dimension of 1265 mm

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 a hip to gable enlargement of roof was well-founded and that Appeal A should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

13. The description of development in this appeal is alterations to the roof of the existing dwelling. The form of the proposed development on plan ref 04a is similar to those in Appeal A, however they vary in terms of certain details. These include the retention or re-instatement of most but not the full length of the eaves of the 'catslide' roof above the existing garage and the introduction of a flue pipe close to the outer edge of the original garage roof. This latter item is not shown on the side elevations.
14. This appeal raises similar issues to Appeal B and I do not intend to rehearse the reasons that led me to find that the proposed development also falls to be considered against Class A. The amended details do not help the appellant as these are considerations which are relevant to Class B. In terms of the flue, the plans are inconsistent and in these circumstances there is insufficient clarity to determine whether or not the requirements of Class G are met. But this is not determinative in this appeal because the development would not be permitted development by reason of Class A.1 (g).
15. Thus for the reasons I have set out in paragraphs 9-11 above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of alterations to roof of existing dwelling was well-founded and that Appeal B should also fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal C

16. The third appeal also proposes alterations to provide additional accommodation above the existing garage but the works propose a revised approach so that the additional accommodation would be within a side dormer. The Council have refused the LDC on the grounds that it would be contrary to Classes A and B of Part 1 Schedule 2 of the GPDO 2015. More particularly the decision says that it would exceed the scope of Class B, being more than an addition or enlargement of its roof. However in this case the appellant says that the works proposed are an alteration of the 'catslide' roof and the works would be entirely within the roof slope. I agree that in this appeal the works would be an addition or alteration to its roof and Class B applies. Moreover, in these circumstances there is no dispute that the development would not exceed the criteria in Class B as listed in paragraph B.1.
17. However development permitted by Class B is subject to 3 conditions. These are firstly Condition B.2 (c) which is concerned with windows inserted on the side elevation; the proposed development clearly fulfils the requirement. Secondly, Condition B.2 (a) says that the materials used in exterior work must be of similar appearance to the existing house. The TG says that in the case of a roof extension the material used for facing a dormer should be of similar colour and design to the materials used in the main roof. Although these details were missing in the application documents the appellant has confirmed

in his final comments that the dormer would be tile hung and thus this condition would be met.

18. Turning finally to Condition B.2 (b) (i) this says, subject to exceptions that are not relevant to this proposal, that the enlargement must be constructed so that:

aa) the eaves of the original roof are maintained or reinstated; and

bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2m from the eaves, measured along the roof slope from the outside edge of the eaves.

(Condition B.2 (b) (ii) does not apply to the proposed development)

19. In respect of (aa) the plans clearly show that the dormer would be set up from the eaves and in from the side of the roof. But in order to comply with the relevant condition the eaves must be maintained or reinstated. However the plans also show that the width of the new or altered roof incorporating the side dormer roof would be narrower than the original. Moreover the full length of the eaves would not, as a matter of fact, be maintained or reinstated as can be seen by comparing the existing and proposed elevations.
20. In addition, as I have noted above in connection with Appeal B, the proposed flue is not shown on the side (north-west) elevation.
21. In an application for an LDC the onus is on the appellant to provide sufficient detailed evidence or information to support his case and demonstrate that the operations would be lawful, if begun at the time of the application. In accordance with this the appellant is expected to describe and illustrate the proposal with sufficient clarity and precision to enable the decision maker to understand exactly what is involved in a proposal. For the reasons I have given above I find that the plans do not have sufficient clarity and are inconsistent in terms of the existing and proposed width of the catslide roof and the flue details. In these circumstances the information before me does not provide sufficient certainty that the requirements, limitations and conditions of the GPDO would be met.
22. 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 construction of dormer in side roof of house was well-founded and that Appeal C should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decisions

APP/X1735/X/15/3017604 : The appeal is dismissed.

APP/X1735/X/15/3017616 : The appeal is dismissed.

APP/X1735/X/15/3133039 : The appeal is dismissed.

Sukie Tamplin

INSPECTOR