

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

Section 191 Appeal

LPA STATEMENT OF CASE

**Application for Lawful Development Certificate relating to
proposed hip to gable enlargement of roof**

109 Hulbert Road, Havant, PO9 3TD

**Local Planning Authority Reference:
APP/14/00837**

**Planning Inspectorate Reference:
APP/X1735/X/15/3017604**



1.0 Site Description

- 1.1 The application site comprises a two storey detached dwelling with two storey front projection with hipped roof. There is an integral garage to the side with cat slide roof linking it to the main roof form of the dwellinghouse. The site benefits from on site parking to the front with vehicle access onto Hulbert Road; the frontage featuring little in the way of natural screening such that the dwelling is clearly visible from the public domain.
- 1.2 The immediate area is predominantly residential in nature with this section of Hulbert Road (i.e. the south side leading from its junction with Newbarn Road) characterised by similar style and design detached dwellings. To the north of the site, on the opposite side of Hulbert Road, is a small woodland area, beyond which are residential dwellings. To the south of the site lie detached bungalows in Chestnut Avenue. These lie on rising ground with consequent views over the rear elevations of Hulbert Road properties.

2.0 Planning History

- 2.1 APP/15/00094 – Application for Lawful Development Certificate relating to alterations to roof. (Resubmission of Application APP/14/00837). Refused – 24/03/2015.

Currently being appealed alongside this appeal – Appeal Ref: APP/X1735/X/15/3017616

3.0 Proposal

- 3.1 Section 192 application for a Lawful Development Certificate to establish whether the proposed development outlined in paragraph 3.2 is considered to be classed as permitted development under the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014.
- 3.2 Description of development proposed by the applicant on the submitted application form is a hip to gable enlargement of the roof. However, it is considered that a more accurate description would be a first floor addition above the existing single storey garage.
- 3.3 The works proposed would see the dwelling altered above the existing single storey garage, removing the existing cat slide roof and creating a first floor level over the garage with new pitched roof which would then link into the hipped roof of the existing dwelling.
- 3.4 The proposed alterations would see the eaves level of the existing dwelling increased from 3.1m to 5.5m in line with the eaves level of the existing dwelling, with a new ridge height of 7.6m, some 1.1m below that of the highest part of the original dwellinghouse. The development would be confined to the area above the existing garage, which has a depth of 5.4m.
- 3.5 There has been some discrepancy surrounding the volume calculations for the roof of the proposed development' with officers' of the Council concerned that the works exceeded 50 cubic metres. Subsequently both the applicant and the Council have requested accurate calculations from their respective engineers. The applicant's engineer has stated the increase in volume would be 42.4 cubic metres whilst the Council's engineer states it is 42.7 cubic metres. These calculations are now closer to an agreed figure and would fall below the maximum 50 cubic metres allowed under Class B of the GPDO for an alteration of a roof for a detached dwelling. Given the implications for an increase above 50 cubic metres it was considered correct to ensure this issue was resolved prior to the issue of a decision.

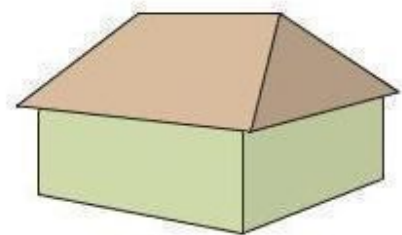
4.0 Planning Considerations

4.1 Whether the development proposed accords with the provisions of the GPDO for householder development

It is considered that the proposed development relates more to a first floor extension above the existing garage rather than an alteration of the roof of the existing dwelling. This is because there is a significant amount of brickwork to create a first floor, over and above what would be considered an alteration of the roof. The development is therefore more of an alteration to the dwellinghouse. A development of this description would mean that the development would fall to be determined solely within Schedule 2, Part 1, Class A of the GPDO. However, having regard to the description of the development on the application form Schedule 2, Part 1, Class B would apply, a point relied on by the appellant's agent.

- 4.2 Whilst it is noted that Class B includes a provision for hip-to-gable enlargement (under Condition B2 b i), this does not apply in this case, because the existing catslide design does not constitute a hip, the defining characteristics of which are illustrated below. (the existing roof is only a single slope rather than a series of slopes which meet, two sides of the existing roof - the front and rear - are formed by vertical faces). The proposal would not retain the eaves at the front and rear (a requirement under Condition B2 b i aa).

Hip roof, also called **hipped roof**, **roof** that slopes upward from all sides of a structure, having no vertical ends. The hip is the external angle at which adjacent sloping sides of a roof meet. The degree of such an angle is referred to as the hip bevel. The triangular sloping surface formed by hips that meet at a roof's ridge is called a hip end. A pyramidal hipped roof, also known as a **pavilion roof**, is hipped equally at all corners and the hips meet at a single peak, but the more common form of hip roof is above a rectangular structure, where a roof ridge meets two hips at either end.



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A variant is the half-hipped or jerkin head roof, which has **gable** ends truncated by the eaves of a small hip end (or jerkin head) that descends a short distance from the roof ridge. On an irregularly shaped structure, there may be more than four hips, which then may alternate with valleys to form a hip-and-valley roof.

Hipped Roof. From Encyclopædia Britannica: <http://www.britannica.com/EBchecked/topic/266553/hip-roof>

- 4.3 The development is therefore not an alteration to the roof but an enlargement and alteration to the dwellinghouse. In light of the difference in interpretation the Council has had regard to the Department for Communities and Local Government, Permitted Development for Householders, Technical Guidance, April 2014, pages 5 and 6 (Appendix 1). This provides clear guidance on how the GPDO should be interpreted and clearly states: "In order to be permitted development, a proposal must meet all the limitations and conditions under the Classes relevant to the proposal." It goes on to say "It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a

whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission."

- 4.4 The above view and interpretation has been supported at appeal (Appeal Ref: APP/T5150/X/13/2205377 126 Herbert Gardens, Kensal Rise, London 30 April 2014), a copy of which was provided to the appellant during the consideration of the application (Appendix 2). The most relevant paragraphs being 5 and 6. Mindful of this consideration, full regard has been given as to whether the proposal could benefit from the provisions of Class A of Schedule 2, Part 1, of the GPDO.
- 4.5 Having regard to the nature of the development, the advice contained within the Technical Guidance, April 2014 and the above appeal decision the Council maintains that it was right to assess the proposal against Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
- 4.6 The Council maintains that Class B is not the relevant Class to consult by the nature of the development proposed, however it is acknowledged that the volume of the addition would fall below 50 cubic metres.

5.0 Assessment against Schedule 2, Part 1, Class A of the GPDO

5.1 Permitted Development

A. The enlargement, improvement or other alteration of a dwellinghouse

5.2 Development not permitted

A.1. Development is not permitted by Class A if-

(a) As a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

The proposal would not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

- 5.3 (b) The height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

The proposal would not exceed the height of the highest part of the roof of the existing dwellinghouse.

- 5.4 (c) The height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

The proposal would not exceed the height of the eaves of the existing dwellinghouse.

- 5.5 (d) The enlarged part of the dwellinghouse would extend beyond a wall which –

(i) fronts a highway, and

(ii) forms either the principal elevation or a side elevation of the original dwellinghouse;

It would not

- 5.6 (e) The enlarged part of the dwellinghouse would have a single storey and-

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

N/A

- 5.7 (f) The enlarged part of the dwellinghouse would have more than one storey and-

- (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or
- (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse.

N/A

- 5.8 (g) The enlarged part of the dwelling house would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.

The proposed enlargement and alteration of the dwelling would be within 2 metres of the side boundary of the site, shared with 111 Hulbert Road. The alteration would also see the eaves level of the dwelling extended to 5.5m in height. As such the altered dwelling would conflict with the requirements of (g) as it is within 2m of the side boundary and would have a new eaves height greater than 3m.

- 5.9 (h) The enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would-

- (i) exceed 4 metres in height
- (ii) have more than one storey, or
- (iii) have a width greater than half the width of the original dwellinghouse; or

The proposal would not extend beyond a wall forming a side elevation

- 5.10(i) It would consist of or include-

- (i) the construction or provision of a veranda, balcony or raised platform,
- (ii) the installation, alteration or replacement of a microwave antenna,
- (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
- (iv) an alteration to any part of the roof of the dwellinghouse.

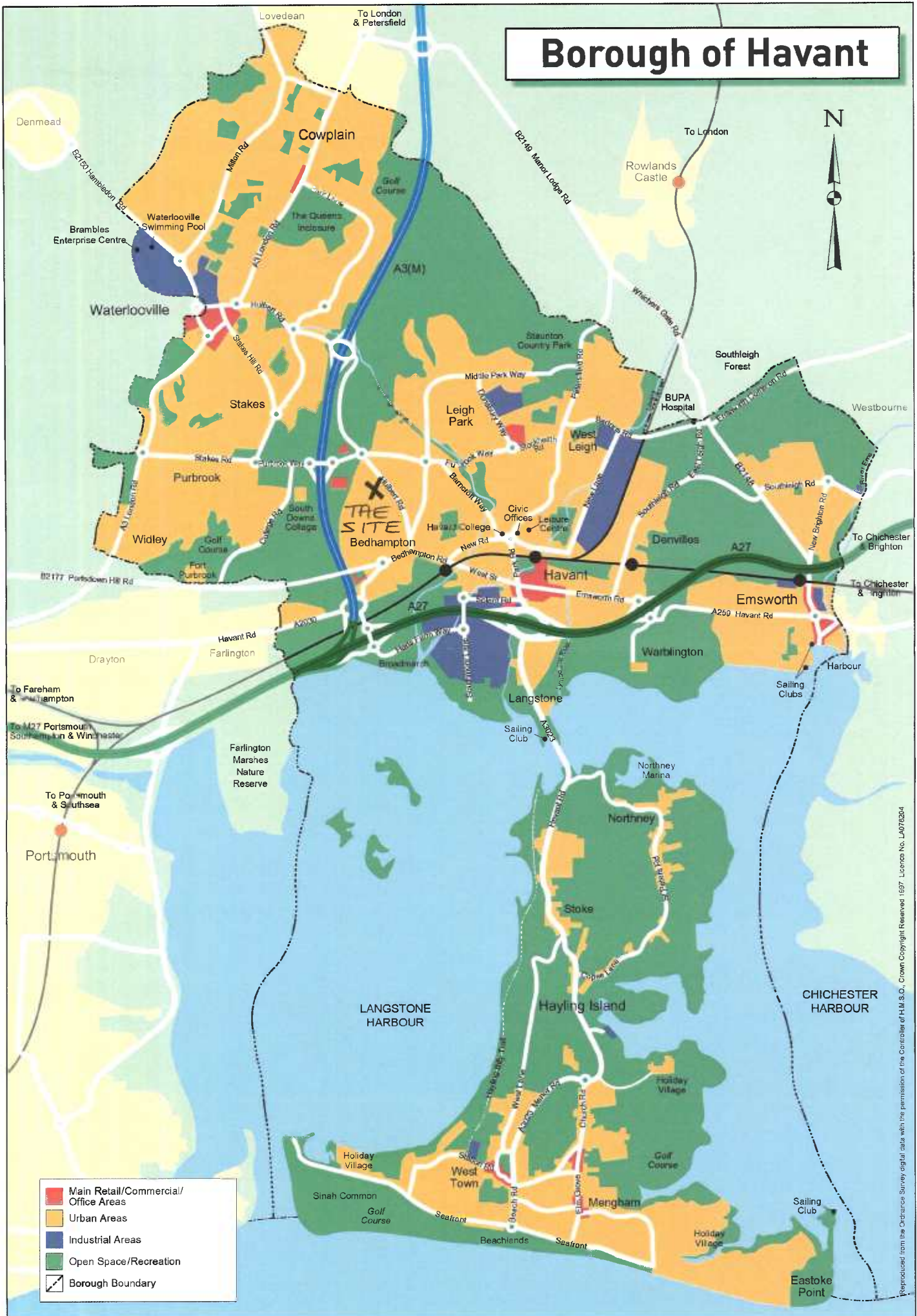
The proposal would not consist of any of the above listed in criteria (i).

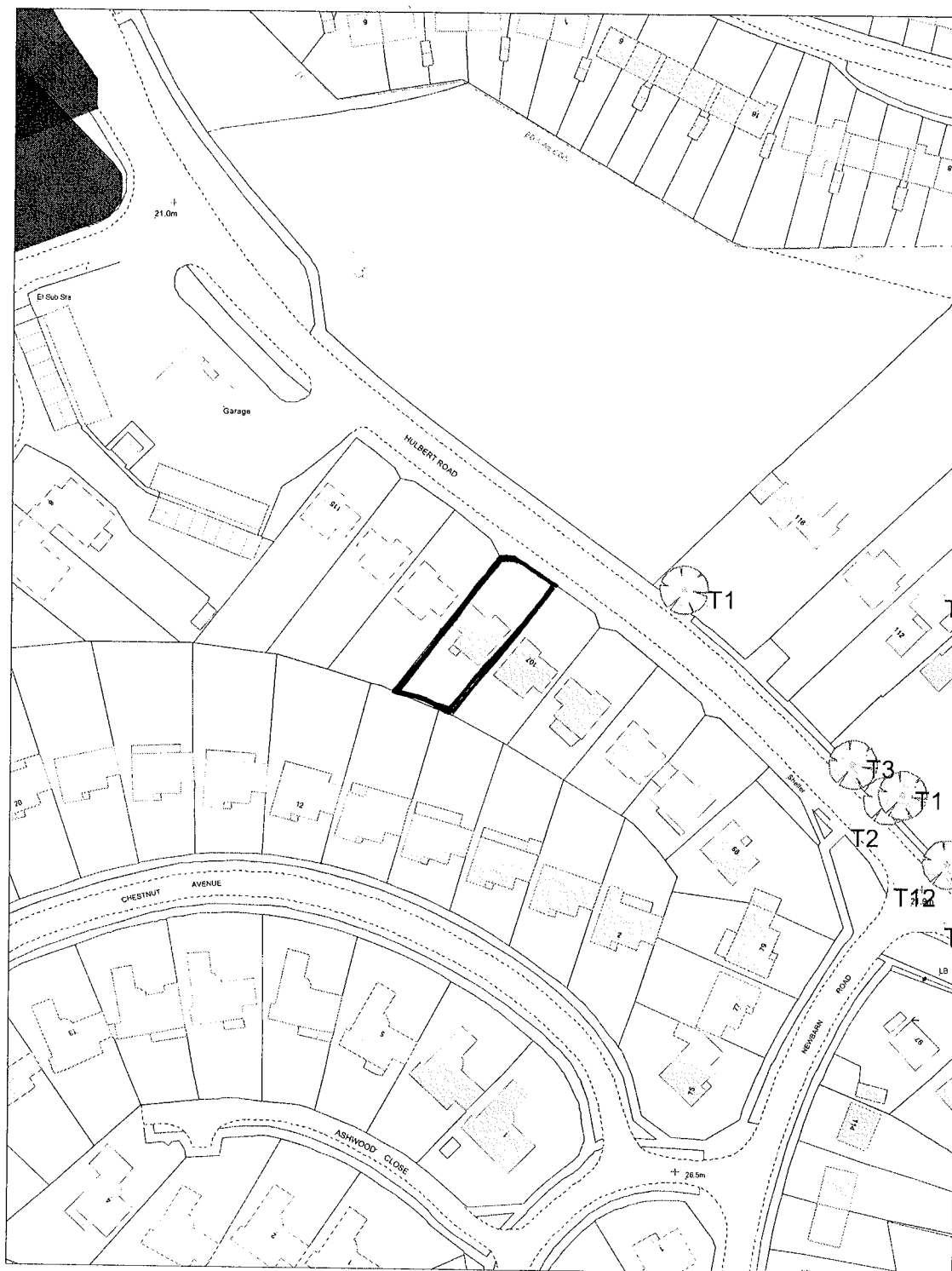
The dwelling is not listed and is not located on article 1(5) land.

6.0 Conclusion

- 6.1 Having regard to the assessment of the proposal against Schedule 2, Part 1, Class A it is contended that the alteration of the dwellinghouse would fail to comply with Class A (g). In so far as the alteration would be within 2m of the side boundary and the new eaves level of the extension would extend above 3 metres in height. The alteration of the dwelling with additional brickwork to create a first floor level above the existing single storey garage does not conform with the definition of a hip-to-gable extension and clearly falls within the scope of Class A.
- 6.2 The failure of the development to meet all of the requirements of Class A means that the development would not fall within permitted development allowance. Planning permission would therefore be required for the development.
- 6.3 The appellant's assessment is noted however, having regard to the information above and supporting evidence supplied by the Department for Communities and Local Government, Permitted Development for Householders, Technical Guidance, April 2014 and appeal decision APP/T5150/X/13/2205377 the Local Planning Authority disputes that the development falls mutually within Schedule 2, Part 1, Class B as it is not confined to an alteration of the roof of the dwellinghouse.
- 6.4 The proposed development fails to comply with Schedule 2, Part 1, Class A (g) of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 and as such the appeal should be dismissed.

Borough of Havant





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Havant
BOROUGH COUNCIL

Title:

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Drawn By:

Scale:

1:1250

Drawing No:

Cleaner, Safer, More Prosperous

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APPENDIX 1 - Excerpt of the Technical Guidance, 2014

Department for Communities and Local Government

Permitted development for householders

Technical Guidance

April 2014

Department for Communities and Local Government

Please note: This technical guidance was commissioned and written under the last Government and updated in April 2014.

It is currently being reviewed by DCLG due to changes introduced by The Town and Country Planning (General Permitted Development) (England) Order 2015 which came into force on 15 April 2015.

Therefore, before undertaking any development, you are advised to check with your Local Planning Authority that the planned work is still covered by your permitted development rights.

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Introduction

Permitted development rights allow householders to improve and extend their homes without the need to seek a specific planning permission where that would be out of proportion with the impact of works carried out. It is important that homeowners understand how they can exercise their rights to carry out development while protecting the interests their neighbours and the wider environment. The Department for Communities and Local Government has produced this technical guidance to help them. It is designed to be used by anyone who wants to understand more about the detailed rules on permitted development and the terms used in those rules. However, anyone who has no previous knowledge of permitted development issues will find it useful to look at the basic information on the Planning Portal first at:

www.planningportal.gov.uk/permission/responsibilities/planningpermission/permitted.

The guidance set out below was updated in January 2013 to clarify the position on solid wall insulation (see page 13), in October 2013 to reflect the time-limited changes to the size limits for rear extensions and the introduction of a neighbour consultation scheme for those larger extensions, both of which came into force in May 2013 (see page 17) and in April 2014 to clarify the position regarding the measurement of eaves in relation to the enlargement of a roof (see page 34). It gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Diagrams have been included for illustrative purposes only and these are not drawn to scale. Given the very substantial variations in the design of individual houses, this guide cannot cover all possible situations that may arise. Where there is any doubt as to whether a development would be permitted development, advice should be sought from the local planning authority. To be certain that a proposed development is lawful and does not require an application for planning permission, it is possible to apply for a "Lawful Development Certificate" from the local authority. Further information on this can be found on the Planning Portal at:

www.planningportal.gov.uk/permission/next/lawfuldevelopmentcertificate,

Householder permitted development rights are set out in Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") and amended by the by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008¹, the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013² and the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014³. Part 1 of Schedule 2 to the 1995 Order (as amended in 2008, 2013 and 2014) sets out the permitted development rules concerning what extensions, improvements and alterations a householder may make to their house and the area around it without the need for an application for planning permission. Houses created through the permitted development rights to change use from shops, financial and professional services premises or agricultural buildings, which were introduced in April 2014, cannot use these permitted development rights to improve, alter or extend homes and planning permission should be sought.

¹ This can be viewed at: <http://www.legislation.gov.uk/ukSI/2008/2362/contents/made>

² This can be viewed at: <http://www.legislation.gov.uk/ukSI/2013/1101/contents/made>

³ This can be viewed at: <http://www.legislation.gov.uk/ukSI/2014/564/contents/made>

General Issues

The 2008, 2013 and 2014 rules on household permitted development amend rules in the 1995 Order⁴. Some of the terms used in the amending rules remain defined in the 1995 Order. These include:

“dwellinghouse” - does not include buildings containing one or more flats or a single flat contained within a building. *Note, however, that for the purposes of this guidance, the word “house” is used rather than “dwellinghouse” unless the legislation is quoted directly.*

“Building” - includes any part of a building and includes any structure or erection, but does not include mechanical plant or machinery or gates, fences, walls, or other means of enclosure.

“Original” - means a building as it existed on 1 July 1948 where it was built before that date, and as it was built when built after that date.

“Existing” - means a building as it existed immediately before any permitted development (eg a house extension) is undertaken. *The existing house will include previous development to the house, whether undertaken as permitted development or as development resulting from a planning permission from the local authority.*

“Height” - references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level⁵. Ground level is the surface of the ground immediately adjacent to the building in question. Where ground level is not uniform (eg if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.

“Article 1(5) land” - this is land within a National Park, the Broads, an area of outstanding natural beauty, an area designated as a conservation area, and land within World Heritage Sites.

⁴ The Town and Country Planning (General Permitted Development) Order 1995. This can be viewed in an unamended form at: <http://www.legislation.gov.uk/uksi/1995/418/contents/made>

⁵ This will be the level of the natural ground and would not include any addition laid on top of the natural ground such as a patio.

The structure of the rules on permitted development

The rules on permitted development are sub-divided into a series of “Parts”. Part 1 specifically deals with development within the curtilage of a house (this is usually the area of land within which the house sits, but for some houses, may be a smaller area). Part 1 is then sub-divided into Classes covering various types of development:

Class A covers the enlargement, improvement or alterations to a house such as rear or side extensions as well as general alterations such as new windows and doors, and from 30 May 2013 to 30 May 2016 a neighbour consultation scheme for larger rear extensions.

Class B covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows.

Class C covers other alterations to roofs such as re-roofing or the installation of roof lights.

Class D covers the erection of a porch outside an external door.

Class E covers the provision of buildings and other development on land surrounding the house (the “curtilage”).

Class F covers the provision of hard surfaces on land surrounding the house such as driveways.

Class G covers the installation, alteration, or replacement of a chimney, flue or soil and vent pipe.

Class H covers the installation, alteration, or replacement of microwave antenna such as satellite dishes.

There are also other Parts of the rules that may be relevant to householders. For example Part 2 covers matters such as erection or construction of gates, fences and walls. Part 40 covers the installation of domestic microgeneration equipment (such as solar panels).

When considering whether a development proposal is permitted development, all of the relevant Parts of the rules and all the Classes within those Parts need to be taken into account. So whilst Part 1 Class A prevents the installation, alteration or replacement of a chimney, flue or soil and vent pipe from being permitted development, Class G includes such development as permitted development subject to the rules set out under that Class.

Similarly, changes to the roof of a house are not permitted development under Class A, but may be permitted development under Class B or C. For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any

alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B.

In order to be permitted development, a proposal must meet all the limitations and conditions under the Classes relevant to the proposal.

It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission.

Further restrictions on permitted development

A local planning authority may have removed some permitted development rights by issuing what is known as an Article 4 Direction or may have removed those rights on the original, or any subsequent, planning permission for the house. This will mean a planning application will be needed for development which normally does not need one. Before undertaking any development, checks should be undertaken with the local planning authority to determine whether any restrictions on permitted development have been made.

The remainder of this guidance provides further explanation about the detailed rules covering what improvements can be made to a house and its surroundings as permitted development. In particular, it provides more details on the limits (eg on size) and the conditions that will need to be complied with if development is to take place without the need for an application for planning permission. The guidance covers in detail Classes A-E of the rules which cover common development projects such as extensions, loft conversions, alterations to a roof, porches, and buildings on land surrounding the house. The rules for Classes F-H are included in this document; detailed guidance on them is not included, although cross-references are included to other guidance published by CLG.



Appeal Decision

Site visit made on 24 February 2014

by Ian Currie BA MPhil MRICS MRTPI^(Retired)

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

Decision date: 30 April 2014

Appeal Ref:- APP/T5150/X/13/2205377

Land and buildings at 126 Herbert Gardens, Kensal Rise, London NW10 3BP

- 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).
- The appeal is made by Mr & Mrs Matt Fell against the London Borough of Brent Council.
- The application, Ref:- 13/1711, was dated 24 June 2013.
- 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 described on the application form as loft conversion (roof extension) within permitted development; replacement of windows on rear elevation.

Summary of decision:- The appeal is allowed and a lawful development certificate is granted.

Preliminary Matters

1. I am satisfied that this decision is unaffected by the Planning Practice Guidance issued on 6 March 2014.
2. I have taken into account the local planning authority's letter of 18 March 2014 and e-mail of 14 April 2014 and the appellant's agent's e-mails of 25 and 31 March 2014 in response to the Planning Inspectorate's letter to both main parties dated 6 March 2014.
3. For the avoidance of doubt, I should explain that the planning merits of any future operations are not relevant and they are not, therefore, an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

4. I consider that the main issue is whether the Council's refusal to grant a lawful development certificate (LDC), for the loft conversion and rear windows, was well-founded. Where a LDC is sought, the onus of proof is on the appellants and the standard of proof is the balance of probabilities.

Reasons

5. At paragraph 3.7 of its statement, the local planning authority conceded that a part hip to gable conversion could be considered a roof alteration under Class B of the Schedule to the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO 2008) and issued a LDC (Ref:- 13/2864 dated 28 October 2013) to that effect. However, even though this constitutes the bulk of the proposed permitted development, the question remains whether any addition to any side wall falls within the ambit of Class A.
6. As the Department for Communities and Local Government Permitted Development for Householders Technical Guidance of August 2010 (PDTG) states, at page 8, *"It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission."*
7. Class A of the Schedule to the GPDO 2008 states that the enlargement, improvement or other alteration of a dwellinghouse is permitted development subject to certain limitations.
8. Limitation A.1(h) states that development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would:-
 - (i) exceed 4m in height;
 - (ii) have more than one storey, or;
 - (iii) have a width greater than half the width of the original dwellinghouse.
9. The PDTG states, at page 22 on limitation A.1(h), that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side walls and an accompanying illustrative diagram shows three side walls in different planes all forming one side elevation. All of the side walls on the diagrams demonstrated as approved under permitted development on pages 17, 18, 23 and 24 are shown expanding sideways rather than upwards.
10. PDTG goes on to say that, where an extension projects beyond **any** (PDTG's emphasis) side wall, the restrictions in limitation A.1(h) will apply. Any extension can only be single storey, be limited to four metres in height and can only be half the width of the original house.
11. At the time of my inspection of the site, I made the observation, based on its method of construction, that I thought that the first floor flat roofed side extension over a garage was contemporary with the original inter-war semi-detached house, or at least predated 1 July 1948, the start date for determining the size of an original dwelling, even though this unbalanced the symmetry of the pair of houses. Despite any subsequent representations made, I consider that, on the balance of probabilities, this remains the case.

12. It is best exemplified in the drawing showing the flank elevation taken from the rear at a time when work to extend the building considerably was at a preparatory stage. It results in there being three flank walls in the original flank elevation. That to the flat roofed two-storey portion to the front remains unaltered. This remains the wall closest to the boundary.
13. The wall that the local authority finds in breach of Class A.1(h) is behind the front flat roofed portion. It would be extended upwards to provide the portion of the flank wall up to eaves level in the hip to part gable end conversion, for which the local planning has issued a LDC. This wall would undoubtedly be two-storeys high and more than 4m high but it would be an extension upwards, in the same plane as the original middle section flank wall, not sideways, as shown on the diagrams in the PTDG.
14. Because this upward extension would not involve any sideways encroachment of the original middle side wall and would be well inside the line of the unaltered original flank wall of the two-storey flat-roofed front portion, I conclude that, despite this part of the enlargement of the side elevation being more than single-storey and over 4m high, limitation A.1(h) would not be breached and the proposed development overall would fall within classes A and B of the Schedule to the 2008 GPDO.
15. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate, in respect of a loft conversion (roof extension) within permitted development and replacement of windows on the rear elevation at 126 Herbert Gardens, Kensal Rise, London NW10 3BP, was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal decision

Appeal Ref:- APP/T5150/X/13/2205377

16. The appeal is allowed and, attached to this decision, is a lawful development certificate describing the extent of the proposed development, which is considered to be lawful.

Ian Currie

INSPECTOR

