



Appeal Decision

Site visit made on 6 October 2015

by **Robert J Jackson BA MPhil DMS MRTPI MCMI**

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

Decision date: **03/11/2015**

Appeal Ref: APP/V2255/W/15/3127801

27 Cumberland Drive, Lower Halstow, Sittingbourne, Kent ME9 7JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Brian Heron against the decision of Swale Borough Council.
 - The application Ref 15/502854/PNEXT, dated 14 April 2015, was refused by notice dated 26 May 2015.
 - The development proposed is a single storey rear extension projecting 4700mm from original rear elevation of the existing property. Maximum height 3.8m. Materials to match existing dwelling and compliant with permitted development rights Class A.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although this proposal is for a prior approval under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order) to allow the Council to consider the impact on the amenity of any adjoining premises the Council refused the application on the basis that it would not meet the criteria set out in paragraph A.1(h) of Part 1 of Schedule 2 of the 2015 Order and would thus not be Permitted Development.
3. This paragraph, which deals with the limits for extensions consisting of rear extensions, states:
 - (h) the enlarged part of the dwellinghouse would have more than a single 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;*
4. The Department for Communities and Local Government document "Permitted development for householders – Technical Guidance" (the Technical Guidance) is designed to explain the detailed permitted development 'rules'. The appellant has referred to the section dealing with paragraph A.1(h) which refers to side extensions and therefore concludes that this is not relevant for this rear extension. This confusion is understandable as the Technical Guidance was last published in April 2014 and was drawn up in line with the

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Town and Country Planning (General Permitted Development) Order 1995 as amended materially for these purposes in 2008 and 2013 (the 1995 Order), and it has not been updated to reflect the drafting of the 2015 Order.

5. What is now paragraph A.1(h) under the 2015 Order was paragraph A.1(f) under the 1995 Order and is of the same effect, subject to the replacement of term "one storey" with "single storey". The criteria to be used are explained on pages 18 and 19 of the Technical Guidance.
6. This appeal does not consider the planning merits of the proposal which are not in front of me.

Main Issue

7. The main issue is whether the proposed extension meets the criteria set out for permitted development under the 2015 Order and in particular whether it meets Schedule 2, Part 1, Class A, paragraph A.1(h).

Reasons

8. 27 Cumberland Drive is a semi-detached two storey house which was extended following planning permission granted in 2005. This was for front and rear extensions but only the rear extension is material to the issue before me.
9. This rear extension is part single and part two storey across essentially the whole rear elevation. It extends approximately 2.5m to the rear of the original property, and the proposal would add a further approximately 2.2m extension resulting in an extension approximately 4.7m, although this latest element would be single storey only.
10. The appellant maintains that for these purposes the 2005 permission should not be considered as part of the original dwellinghouse, and I agree as the 2015 Order defines "original", in the context of this case, as meaning the house as it was first built.
11. There is no definition in the 2015 Order as what constitutes the "enlarged part" of the dwellinghouse. It seems to me that the enlarged part should mean that part of the resulting property beyond the original property i.e. as enlarged by both express planning permissions and any permitted development. Otherwise it would be possible to construct extensions without an application for planning permission larger than that would be allowed by permitted development alone and thus exceed the overall criteria set out in the 2015 Order. This cannot be what was intended by the legislation. My interpretation is strengthened by the illustration at the bottom of page 18 in the Technical Guidance which shows an extension of similar design to the situation in this case as not meeting the criteria.
12. Utilising this interpretation, taken together with the rear extension already constructed, the proposed extension would exceed the criteria set out in paragraph A.1(h) of the 2015 Order as the enlarged part would have more than a single storey and part of it would extend for more than 3 metres from the rear wall.

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Conclusion

13. Consequently, on the evidence before me the proposal does not comply with the criteria set out in paragraph A.1(h) of the 2015 Order and the appeal should be dismissed.

Robert J Jackson

INSPECTOR