

Application Number	10/0562/CL2PD	Agenda Item	
Date Received	25th June 2010	Officer	Mr Peter Carter
Target Date	20th August 2010		
Ward	Coleridge		
Site	89 Hobart Road Cambridge Cambridgeshire CB1 3PT		
Proposal	Application for a certificate of lawfulness under Section 192 for a proposed single storey rear extension, rear dormer window and two front rooflights.		
Applicant	Mr Thomas Gilbert-Wooldridge 89 Hobart Road Cambridge Cambridgeshire CB1 3PT		

This application is brought to Committee because the applicant is married to a Council Officer.

1.0 SITE DESCRIPTION/AREA CONTEXT

- 1.1 The property is a mid-terrace, two storey dwelling house located on the eastern side of Hobart Road, which has not, to date, been extended. The terrace stands on a north-south axis, with two houses in the terrace to the north of 89, and 5 houses to the south. To the north and south of the terrace and opposite, on the west side of the street, are other terraces of houses. To the east of the garden of this and other houses in the street are the playing fields associated with Coleridge Community College, part of the Parkside Federation.
- 1.2 The application site for the ground floor extension is in the rear garden of 89 Hobart Road, east of the dwelling. Access to the rear garden of this and other properties can be gained by an access between 83 and 85 Hobart Road and along the boundary with the playing field.

1.3 The site is not allocated in the Cambridge Local Plan (2006) and is not within any of the City of Cambridge Conservation Areas.

2.0 THE PROPOSAL

2.1 This is an application for a Certificate of Lawfulness for additions to the existing dwelling. Three additions are proposed:

- i) a single storey rear extension measuring 5.1 metres wide by 3.0m deep (3.3m to the full extent of the overhang), with a lean-to roof rising from 2.4m at its eastern end to a maximum 3.4m against the rear wall of the existing house;
- ii) a dormer window, 4.5m wide and 2m high. It is to be raised 900mm above the eaves line of the existing house and set down 250mm from the ridge of the dwelling. The flat east face of the dormer will be 1.65m in height under a shallow sloping roof. Two velux rooflights are proposed in the front roofslope; and
- iii) Two rooflights to the front plane of the roof

2.2 The application is accompanied by brief supporting statement and the following plans:

A location plan @1:1250; a 1:500 Block plan and existing elevations and floor plans (drawing 01); proposed floor plans (drawing 02); a loft plan and section (drawing 03); and proposed elevations (drawing 04).

3.0 SITE HISTORY

Reference	Description	Outcome
	No previous planning history	

4.0 ASSESSMENT

4.1 This is an application made under S192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for the erection of a the single storey rear extension and addition to the rear roof slope and the introduction of two rooflights to the front roof slope of 89 Hobart Road. The applicant seeks to demonstrate that the proposed works constitute development not requiring planning permission as set out in Classes A (rear extension), B (rear dormer) and C (velux windows) of the Town

and Country Planning (General Permitted Development) Order 1995 (as amended). Copies of the relevant Classes are attached as an Appendix to this report.

The Single Storey Rear Extension.

- 4.2 Part 1 Class A of the Town and Country Planning (General Permitted Development)(Amendment) (No 2) (England) Order 2008 (the Order) addresses Development within the curtilage of a dwellinghouse. It sets out that The enlargement, improvement or other alteration of a dwellinghouse, constitutes permitted development, but then goes on to explain that development is not permitted in a number of specific circumstances. Those specific tests are set out below in italics, with the officer response to this specific case below.

(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 curtilage of the site is quite generous at about 42 x 5 metres, with only a small proportion (about 7.3m x 5m occupied by the dwelling); the extension would occupy only slightly more than 5% of curtilage excluding the area of the original dwellinghouse.

(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 proposed extension will not exceed the height of the highest part of the roof of the existing dwellinghouse.

(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 proposed extension will not exceed the height of the highest part of the eaves of the existing dwellinghouse.

(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;

the proposed extension will not extend beyond a wall fronting the highway and does not form a principal elevation of the existing dwellinghouse.

(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;

the proposed walls of the extension will not extend beyond the rear wall of the dwellinghouse by more than 3 metres (this not being a detached house) and will not exceed 4 metres in height. The overhang of the roof of what is proposed does, however, extend 300 mm more than the 3 metre limitation set out in the legislation. In my opinion this is the only part of the whole proposal that is in any way contentious.

In response to concern expressed by officers about this 'encroachment' beyond the 3.0m limitation set out in the legislation, the applicant has submitted two planning appeal decisions made since the legislation was introduced. The first of them is less material than the second, which is very similar to what is proposed here. In that second case, the 'Greenford' case, the Inspector notes that, the scheme does not allow for the overhang of the eaves and gutter, which results in the proposed rear extension exceeding the 3 metres maximum permitted projection beyond the rear wall of the existing dwelling by this amount of overhang (calculated as 350mm). He goes on to argue that, The 2008 amendments to GPDO Part 1 adopted an impact-based approach. I believe that the 3 metre maximum projection from the rear wall of the dwellinghouse mentioned in the amendments was intended to refer to the main body of the extension to be permitted and that it is not intended that the projection of the eaves and gutters should normally be taken into account. In most circumstances, the projection of the eaves and gutters would make little, if any, significant difference to the impact of the extension under consideration. In the appeal case, there is nothing out of the ordinary about the eaves and gutters that suggest to me that they have any effect on the impact of the proposed extension. I therefore conclude, as a matter of fact and degree, that the projection due to the eaves and gutters of the proposed extension is de minimis and

should be disregarded in assessing the projection of the proposed extension from the rear wall of the existing dwellinghouse. I accept that the eaves and gutters here project more than was the case in the Halifax example referred to by the Council (Ref: APP/A4710/X/09/2103056) but not to the extent that I believe that a different approach to that adopted by the Inspector in that case is warranted. On that basis the Inspector allowed the appeal.

While I accept the view of the Inspector that, in a purely practical sense, in this case (as in the one he was considering), "...the projection of the eaves and gutters would make little, if any, significant difference to the impact of the extension under consideration, I cannot see anywhere in the legislation a basis for his assertion that the, 3 metre maximum projection from the rear wall of the dwellinghouse mentioned in the amendments was intended to refer to the main body of the extension to be permitted and that it is not intended that the projection of the eaves and gutters should normally be taken into account.

I am of the view that the legislation states that the relevant dimension is 3 metres, and that there are no caveats. I think that there is considerable danger in suggesting that something in excess of 10% greater than the legislation suggests (350mm:3metres in the Greenford case; 10% - 300mm:3 metres here) should be considered de minimis. Both the Inspectors in the two appeal decisions defend their positions by arguing that the issue is about the impact and that it is a matter of fact and degree. To the best of my understanding, there is no decision from the Courts on the matter. I do not consider there to be any justification for allowing the limitations set out in the legislation to be 'stretched' and am therefore of the opinion that the proposal fails in this regard.

(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;

the proposed extension will not have more than one storey.

(g) the enlarged part of the dwellinghouse 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 extension will be within 2 metres of a boundary, but will not have an eaves height in excess of 3 metres.

(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

(ii) have a width greater than half the width of the original dwellinghouse; or

the proposed extension would not extend beyond a wall forming a side elevation of the dwellinghouse

(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 proposed single storey rear extension does not consist of or include any of these elements.

4.3 The Order goes on to set limitations for development in Conservation Areas, but as this site is not in a Conservation Area those limitations do not apply here. And finally the Order stipulates that external materials used shall be of a similar appearance to the exterior materials of the existing dwellinghouse; and to address proposals with windows in side elevations and of extensions more than one storey in height. The two last matters, again are not relevant here; the applicant has advised that the external materials will match.

4.4 Having considered all the tests I am of the opinion that the single storey extension proposed does not constitute permitted development because the house is part of a terrace and the extension would extend beyond the rear wall of the original dwellinghouse by more than 3 metres.

The Addition to the Roof

4.5 Part 1 Class B of the Order advises that, The enlargement of a dwellinghouse consisting of an addition or alteration to its roof, constitutes permitted development, but then goes on to explain a number of specific circumstances when development is not permitted. Those instances where development is not permitted without express planning permission are set out below in italics, with the officer response to this specific case below.

- (a) *any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;*
the addition to the roof proposed here would not exceed the highest part of the roof;
- (b) *any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;*
the addition to the roof proposed here would not extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;
- (c) *the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—*
 - (i) *40 cubic metres in the case of a terrace house, or*
 - (ii) *50 cubic metres in any other case;*the addition proposed to the roof of this terrace house would have a volume that would be less than 13 cubic metres ($4.5 \times 2 \times 2.8 \div 2 = 12.6$ approx.), significantly below the 40 cubic metre tolerance for a terrace house.
- (d) *it would consist of or include:*
 - (i) *the construction or provision of a veranda, balcony or raised platform, or*
 - (ii) *the installation, alteration or replacement of a chimney, flue or soil and ventpipe; or*the addition proposed to the roof of this terrace house does not show any of these elements
- (e) *the dwellinghouse is on article 1(5) land.*
as rehearsed previously the site is not in a conservation area.

4.6 The Order goes on to stipulates that external materials used shall be of a similar appearance to those used in the rear of the existing; that the edge of the addition should so far as is

practicable be at least 20cm from the existing eaves of the original roof; and to impose limitations on side windows. In this case the applicants have indicated that the materials are to reflect the existing. The addition is much more than 20cm above the existing eaves and no side windows are proposed.

- 4.7 Having considered all the tests I am of the opinion that the addition proposed to the roof of this terrace house constitutes permitted development.

The Rooflights

- 4.8 Part 1 Class C of the Order advises that, any other alterations to the roof of a dwellinghouse are permitted development, but then goes on to explain a number of specific circumstances when development is not permitted. Those instances where development is not permitted without express planning permission are set out below in italics, with the officer response to this specific case below.

- (a) *the alteration would protrude more than 150 millimetres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;*
The applicant has specified that the rooflights proposed for the front roofslope will not exceed the specified 150mm beyond the plane of the slope.
- (b) *it would result in the highest part of the alteration being higher than the highest part of the original roof;*
the introduction of the rooflights will not exceed the highest part of the original roof
- (c) *it would consist of or include—*
(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.
the introduction of the rooflights will not consist or include any of the above

- 4.9 The Order goes on to address windows in side elevations but those issues do not apply to this proposal.

- 4.10 Having considered all the tests I am of the opinion that the introduction of the rooflights constitutes permitted development.

5.0 CONCLUSION

5.1 On the basis of the information supplied in the planning statement and the plans that accompanied the application, I have concluded that:

- i) the rear extension proposed under Class A does not constitute permitted development;
- ii) the rear roof dormer alterations and the rooflights in the front roof slope constitute permitted development under Classes B (the rear roof dormer) and C (rooflights) of the Town and Country Planning (General Permitted Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development)(Amendment) (No 2) (England) Order 2008.

The proposals in ii), although constituting development, do not therefore require express planning permission and, provided they are constructed in accordance with the submitted plans and information, would be lawful for planning purposes.

5.2 As, however, the rear single storey extension is not considered to constitute permitted development my recommendation is that the application for a Certificate of Lawfulness is refused. That recommendation is made in the awareness that an Inspector in making his decision in a case where the roof projected at least as far beyond the rear wall as is the case here allowed the appeal

6.0 RECOMMENDATIONS

- 1. That a Certificate of Lawfulness be Refused under Section 192 of the Town and Country Planning Act 1990 (as amended) for the erection of a single storey rear extension at 89 Hobart Road**

Reasons (to be included in Certificate)

It appears to the Local Planning Authority that although the proposed single storey rear extension will not cover more than 50% of the curtilage (excluding the ground area of the original dwellinghouse) and will not exceed the height limitations or conflict with requirements regarding location for the enlargement, improvement or other alteration to a house outside a Conservation Area, set out in Class A of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development)(Amendment)(No.2) (England) Order 2008, the rear extension will extend beyond the rear wall of the original dwellinghouse by more than the limitation of 3 metres which that legislation applies to a dwelling that is not a detached dwellinghouse. The proposed single storey rear extension is not therefore considered lawful for planning purposes.

FIRST SCHEDULE

The erection of a single storey rear extension, the addition to the rear roof slope and the introduction of two rooflights to the front roof slope.

SECOND SCHEDULE

89 Hobart Road, Cambridge, as identified outlined in RED on the location plan attached to this Certificate.

2. That in the event of a planning application being made for a single storey rear extension of the same size as that shown on the originally submitted plans, East Area Committee give delegated authority to approve the application, without it being brought back to Committee for consideration.

Under Section 100D of the Local Government Act 1972, the following are “background papers” for each report on a planning application:

1. The planning application and plans;
2. Any explanatory or accompanying letter or document from the applicant;
3. Comments of Council departments on the application;
4. Comments or representations by third parties on the application as referred to in the report plus any additional comments received before the meeting at which the application is considered; unless (in each case) the document discloses “exempt or confidential information”
5. Any Structure Plan, Local Plan or Council Policy Document referred to in individual reports.

These papers may be inspected by contacting John Summers (Ext.7103) in the Planning Department.



10/0562/CL2PD
89 Hobart Road Cambridge Cambridgeshire CB1 3PT