

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

11 April 2012

Report of the Chief Solicitor

Part 1- Public

Matters for Information

1 PLANNING APPEAL DECISIONS

- 1.1 Site **Dalkeith, Sandy Lane, Ivy Hatch**
Appeal **Against the refusal to grant a certificate of lawful use concerning the erection and installation of a single storey aluminium framed glassroom 7 metres wide by 4.5 metres projection onto the side elevation of the existing property**

Appellant **Mr Alistair Mansell**

Decision **Appeal dismissed**

Background papers file
TM/11/02087/LDP

Contact: Cliff Cochrane

Dalkeith is a detached dwellinghouse. As it lies within the Kent Downs Area of Outstanding Natural Beauty (AONB), the appeal site is 'Article 1(5) land' for the purposes of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO). The proposal comprises the erection of a single storey 'glassroom' with a monopitch roof at the side of the dwellinghouse. This would be located on existing raised timber decking and would adjoin the main building's eastern elevation.

Reasoning

The Appellant asserts that 'the proposed glassroom can't be classed as a full side extension', thus implying that it does not amount to development that requires express planning permission. However, although the onus is firmly on the Appellant to demonstrate his case to this effect on the balance of probabilities, this stance is not substantiated by reference to statute or case law.

Although the Appellant points out that the structure would be lightweight in appearance, would sit on the existing decking and would not be visible from public land, these are not characteristics that determine its lawfulness. Section 57 of the 1990 Act as amended establishes that planning permission is required for the carrying out of any development of land. 'Development' as

defined by section 55 includes the carrying out of 'building operations' which, in turn, include 'structural alterations or additions to buildings' and 'other operations normally undertaken by a person carrying on business as a builder'.

The application drawings indicate that the glassroom would be physically and firmly attached to the side elevation of the existing dwelling and that its frame would be supported by timber posts provided for the purpose and set within concrete beneath the decking. Applying the relevant tests set by the Courts in *Cardiff Rating Authority v Guest Keen Baldwin Iron & Steel Co Ltd* [1949] 1 KB 385 and *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* [2000] JPL 1025, it is readily apparent that the erection of the glassroom would constitute a 'building operation' and thus 'development'.

Article 3 of the GPDO grants deemed planning permission for certain categories of 'permitted development' as set out in Schedule 2 thereto. Class A of Schedule 2 classifies the enlargement, improvement or other alteration of a dwellinghouse as permitted development subject to certain exclusions. Paragraph A.2 of that Class records that development is not thus permitted if, in the case of a dwellinghouse on Article 1(5) land, the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. On the evidence before the Inspector the proposal does not fulfil this criterion. The Appellant cites compliance with criterion (iii) of paragraph A.1(h), that the proposal would be less than half the width of the original dwellinghouse. However, this paragraph does not apply within an AONB.

Moreover, even if compliance with paragraph A.2 had been secured, the scheme would still fail to comply with paragraph A.1(e)(ii). This specifies that development is not permitted under Class A if the enlarged part of the dwellinghouse would have a single storey and would exceed 4 metres in height. In accordance with Article 1(3), height must be measured from the highest level of the surface of the ground immediately adjacent to the building in question, rather than from the surface of the raised decking. The application drawings, together with undisputed measurements of the decking quoted by the Council, indicate that the overall height of the glassroom would be more than 4 metres above the adjacent ground level.

No other permitted development classes are applicable and therefore, on the evidence available, the appeal scheme would not benefit from deemed planning permission. Nor has express planning permission been granted. Accordingly, the Appellant has failed to demonstrate on the balance of probabilities that the proposal would have been lawful at the time of the application.

For the reasons given above and having regard to all matters raised, the Inspector concluded that the Council's refusal to grant a LDC was well-founded and that the appeal should fail.

Adrian Stanfield
Chief Solicitor