
Appeal Decision

Site visit made on 16 August 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 19 September 2016

Appeal ref: APP/J1915/X/15/3141457

19 Orchard Road, Tewin, Welwyn, Hertfordshire AL6 0HG

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Mrs Joan Woods against the decision of East Hertfordshire District Council.
 - The application reference: 3/15/1604/CLP dated 31/07/2015 was refused by notice dated 25th September 2015.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: 3m two storey extension to the original dwellinghouse. Replacement of existing outbuilding.
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Decision

1. The appeal is dismissed insofar as it relates to the replacement of an existing outbuilding. The appeal is allowed insofar as it relates to the 3m two storey extension to the original dwellinghouse; and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Preliminary matters

2. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application i.e. 31/07/2015. The matter to be decided upon is whether the proposed development, if carried out at that date, would have been lawful.
 3. The relevant statutory instrument for the purposes of assessing whether the development would have been lawful is the Town and Country Planning (General Permitted Development)(England) Order 2015 [hereafter "the GPDO"]. Part 1 to Schedule 2 of the GPDO applies to householder development. It provides for enlargements, improvements or other alterations of a dwellinghouse and for incidental buildings as "permitted development" subject to limitations and conditions.
 4. On 13 April 2016 the Department for Communities and Local Government published "Permitted development rights for householders: technical guidance" [hereafter 'Technical Guidance']. The Technical Guidance updates and replaces the previous guidance which has been referred to by the parties in the appeal submissions. However, so far as the issues in this appeal are concerned there is no material difference between these two versions.
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5. Whilst not a definitive statement of the law, the Technical Guidance sets out how Government intends that permitted development provisions for householders are to be interpreted. The Technical Guidance should, therefore, generally be followed unless a different interpretation is given by the Courts.
6. In an LDC appeal the burden of proof to demonstrate that the matter proposed is lawful is upon the appellant. The planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main issue

7. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

Replacement outbuilding

8. Under Class E (paragraph E.1(e)) to Part 1 of Schedule 2 to the GPDO there is a height limitation of 3m for incidental buildings which do not have dual pitched roofs. The proposed outbuilding exceeds 3m in height and does not have a dual pitched roof. The appellant concedes, and I agree, that the building would not have been permitted development and, thus, would not have had entitlement to an LDC.

3m two storey extension

9. This element of the proposal falls to be considered under Class A of Part 1 to Schedule 2 of the GPDO. It is common ground that, apart from the condition imposed by A.3(c), the development complies with all other limitations and conditions of Class A. I have no reason to disagree. I shall, therefore, focus upon the condition in question.
10. The condition states that, in the case of an extension that has more than a single storey, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.
11. The original dwellinghouse has a hipped roof. The roof to the proposed extension follows the pitch of the original roof hips and its rear facing plane. To all of its three elevations the pitch of the extension roof is seen as being the same as the roof pitch of the original dwelling.
12. The height of the extension roof is a little below the ridge of the original dwellinghouse. This is where its roof slopes end and where the extension is then crowned by a section of flat roof. However, the flat roof section is not seen in any of the elevations and would be barely detectable when viewing the extension from its surroundings. It cannot reasonably be drawn, from this inconspicuous roof crown, that the development as a whole fails to match the roof pitch of the original dwellinghouse.
13. The Technical Guidance (at page 32) has a diagram which shows, as an example, a hipped roof of a rear extension that is said to comply with A.3(c) and which closely resembles the appellant's proposal. Whilst I acknowledge that the horizontal roof line in the diagram could represent a ridge, rather than

the edge of a section of flat roof, the accompanying text does not rule out either possibility.

14. The Council argues that a pitched roof design (without a flat section) would be practicable and that the appeal proposal does not go far enough¹. However, the appeal proposal as it stands provides for a roof pitch which is the same as the original dwelling. There is no need to examine the practicalities of what is being proposed or of alternative designs as the proposal complies with the condition in any event.
15. In the specific circumstances of this case I find that the 3m two storey extension with its roof pitches, if erected at the application date, would have complied with condition A.3(c) as a matter of fact and degree.

Conclusions

16. For the reasons given above I conclude that the Council's refusal to grant an LDC was well founded insofar as it relates to the replacement of the existing outbuilding. However, insofar as it relates to the 3m two storey extension to the original dwellinghouse I conclude that the Council's refusal to grant an LDC was not well founded. The appeal succeeds to that extent. I will exercise accordingly the powers transferred to me under s195(2) of the Act and grant a certificate relating to that part.

Susan Wraith

INSPECTOR

¹ An LDC has been granted for a 3m extension of different roof design which matches the pitch of the original roof and which does not include a flat section.

Lawful Development Certificate

APPEAL REFERENCE APP/J1915/X/15/3141457
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31/07/2015 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

The proposed development would have been permitted development under Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Susan Wraith

INSPECTOR

Date: **19 September 2016**

First Schedule

3m two storey extension to the original dwellinghouse as shown on plans numbered 3872 PLA 1.00, 3872 PLA 1.01, 3872 PLA 1.02 and 3872 PLA 1.03 accompanying the application dated 31/07/2015.

Second Schedule

19 Orchard Road, Tewin, Welwyn, Hertfordshire AL6 0HG

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
 2. It certifies that the development described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
 3. This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
 4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.
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Plan

This is the plan referred to in the Lawful Development Certificate dated: **19 September 2016**

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Scale: Not to scale

