

Appeal Decisions

Site visit made on 12 December 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 9 January 2017

Appeal Ref: APP/P2365/X/16/3151131

Moss Grove Cottage, Wood Lane, Lathom, Ormskirk L40 4BW

- 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 certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Pamela Beckett against the decision of West Lancashire Borough Council.
 - The application Ref 2016/0319/LDP, dated 18 March 2016, was refused by notice dated 12 May 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is two side extensions (in accordance with Class A, Part 1, Schedule 2 of the GPDO) to both sides of the original dwelling house, a rear extension (in accordance with Class A, Part 1, Schedule 2 of the GPDO) and detached pool house (in accordance with Class E, Part 1, Schedule 2 of the GPDO).
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Appeal Ref: APP/P2365/W/16/3151161

Moss Grove Cottage, Wood Lane, Lathom, Ormskirk L40 4BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Beckett against the decision of West Lancashire Borough Council.
 - The application Ref 2015/1221/FUL, dated 26 November 2015, was refused by notice dated 15 February 2016.
 - The development proposed is demolition of existing dwelling and replacement with one detached dwelling, associated landscaping and new access.
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Decisions

Appeal Ref: APP/P2365/X/16/3151131

1. The appeal is dismissed in part but allowed in part and attached to this decision is a certificate of lawful development describing the proposed development which is considered to be lawful.

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2. The appeal is allowed and planning permission is granted for demolition of existing dwelling and replacement with one detached dwelling, associated landscaping and new access at Moss Grove Cottage, Wood Lane, Lathom, Ormskirk in accordance with the terms of the application, Ref 2015/1221/FUL dated 26 November 2015, subject to the following conditions:
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1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with approved plan nos. 14058 – 50, 51B, 52B, 53, 54, 55, 56, 57, 58, and 59.
3. No development shall take place until details of finished levels, above ordnance datum and in relation to existing ground levels, of the ground floor of the proposed building and of all parts of the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
4. The dwelling hereby permitted shall not be occupied until the existing vehicular access to an extension of Bleak Lane has been permanently closed. The closed access shall not any time be brought into use.
5. Any gates erected at the new access into the site shall be positioned at least five metres from the nearest edge of the highway and shall open away from the highway.
6. No development shall take place until details and/or samples of materials to be used have been submitted to and approved in writing by the local planning authority. Development shall be carried out using the approved materials.
7. No development shall take place until a scheme for the foul and sustainable surface water drainage of the development hereby permitted, including any necessary attenuation measures, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the dwelling is occupied and shall thereafter be maintained at all times.
8. No tree felling, site clearance, hedgerow removal or building or demolition works that may affect nesting birds shall be carried out between 1 March and 31 August unless the absence of nesting birds has been confirmed in a survey carried out by a qualified ecologist. The conclusions of such a survey shall be submitted to and agreed in writing by the local planning authority before works on site take place.
9. During demolition of the existing dwelling roof slates, barge boards, lead flashings, timber window frames and boarded windows shall be carefully removed by hand. A bat access panel shall be incorporated into the dwelling hereby permitted and shall thereafter be retained.
10. No development shall take place until details of a scheme for the eradication of Himalayan Balsam and Rhododendron has been submitted to and approved in writing by the local planning authority. The scheme shall include a scale plan showing the extent of the plants, details of plant removal and prevention of future spreading, monitoring procedures and a timetable and programme for implementation of the scheme. The approved scheme shall be implemented in full and when the site has been free of both species for a continuous twelve month period a report to this effect shall be submitted to and approved in writing by the local planning authority.
11. No development shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of trees and vegetation

to be retained and their protection during the construction period, earthworks, means of enclosure, boundary treatments, vehicle parking and turning areas, pedestrian circulation areas, hard surfacing materials, water features, planting and turfing plans and schedules, and a programme and timetable for implementation and maintenance of the scheme. The approved scheme shall be implemented and maintained, for a period of seven years, in accordance with the programme and timetable.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no garages, extensions, sheds, structures, outbuildings, garden buildings, swimming pools, fences, gates or walls shall be erected on the site without the prior written approval of the local planning authority.

Application for costs

3. An application for costs was made by Mr and Mrs Beckett against West Lancashire Borough Council. This application is the subject of a separate Decision.

Reasons

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4. Moss Grove Cottage is a detached 4-bedroom dwelling in a residential curtilage of about 0.2 hectares. The main part of the dwelling has two storeys, is 17.1 metres wide, and has a gable pitched roof; the rear secondary part of the dwelling is single storey, is about 3.8 metres deep, and has a flat roof; and a side garage element has a monopitch roof. The current dwelling was created following implementation of a planning permission granted in 1982 for 'conversion, alteration and extension of barn to form extension to existing attached house'. Prior to the implementation of the planning permission the building on the land, what is now the main part of the dwelling, comprised a two storey cottage and a 'barn'.

5. The application comprised four elements; a small single storey side extension to the south-west gable of the dwelling, the demolition of the rear secondary part of the dwelling and its replacement with a single storey extension 8 metres deep, the demolition of the side garage element and its replacement with an extension which would be 8.55 metres wide and as deep as the main part of the dwelling, and the construction of a swimming pool building about 10.5 metres wide and 20 metres long in the residential curtilage of the dwelling. The Council granted an LDC for the first of these four elements but refused to grant an LDC for the other three elements. The appeal therefore relates to these three elements.

6. Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) sets out development that is permitted within the curtilage of a dwellinghouse. Class A relates to the enlargement, improvement or other alteration of a dwellinghouse and Class E relates to, amongst other things, the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. Class A is relevant to consideration of the second and third elements of the application, a rear extension and a side extension, and Class E is relevant to consideration of the fourth element of the application, a swimming pool building.

7. The main issue is whether the proposed rear and side extensions to the dwelling and the proposed swimming pool building within the curtilage of the dwelling would be development permitted under the provisions of the GPDO. The onus of proof in an LDC application is on the Appellant and, whilst her evidence does not need to be corroborated by independent evidence in order to be accepted, she must provide sufficient precise and unambiguous evidence to justify, on the balance of probability, the grant of a certificate.

8. The proposed rear extension falls to be considered under clause (g) of Class A, which provides that until 30 May 2019 development is permitted if the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse, if it is detached, by no more than 8 metres. The critical word in this provision of the GPDO is 'original' because original, in relation to a building existing on 1 July 1948 and as defined in the GPDO, is the building that was existing on that date. The 'original' building was the cottage and the barn but the Council maintains that the 'barn' was not part of the dwellinghouse as it existed on 1 July 1948. They therefore maintain that the rear extension would not extend beyond the rear wall of the original dwellinghouse.

9. The Appellant maintains, however, that the 'barn', prior to its conversion around 1983, was not used as a barn, which is generally defined as a building or structure that houses farm animals, grain and equipment. She maintains that it was used for domestic storage purposes, the storage of coal and logs, and that it can therefore be considered to have been part of the dwellinghouse that existed in 1948. Included with appeal documentation are a sworn affidavit submitted with a previous withdrawn application and a statutory declaration submitted with the appeal application, both by Mr Anthony Fairclough who has lived close to the appeal property since his birth in the 1940's. The affidavit does not refer to the 'barn' or to its previous use but the declaration does state that "I have never at any time...seen any livestock kept in...'the Barn End' of the property. That area was always used as a storage place for coal and logs for the dwelling".

10. The 'barn' had an internal floor area of about 37 square metres though a small part, about 4.5 square metres, had, at some point, been subdivided from the remainder to create a porch, which had a door to the outside and a door into the cottage but no door into the remainder of the barn. There is no reason to doubt Mr Fairclough's statement regarding the barn's use "...as a storage place for coal and logs for the dwelling..." but such an area would have been significantly more than adequate for the storage of coal and logs for a cottage with a footprint of only about 33 square metres. It is likely that the 'barn' was also used, given its size, for other purposes such as the storage of other domestic items. The Appellant's Agent has, in fact, likened the 'barn' to an integral garage of a new build dwelling. But the 'barn', excluding the porch, was similar in floor area to the cottage and was therefore incomparable to an integral garage.

11. The 1982 application was for 'alterations to existing house and barn conversion' (this description was altered by the Council in the planning permission). The application form indicated that the present use of the buildings/land was 'house and barn' and that the proposal involved and included the change of use of the barn. There is no reason to doubt the declared statements by Mr Fairclough and it is possible that the 'barn' has never been used to support any agricultural activities. But the change of use applied for in 1982 could have been a necessary change from part non-domestic storage uses to facilitate the extension of domestic accommodation. Taking into account its size

and other factors there is no conclusive evidence to indicate that the 'barn' has been in wholly domestic use since before 1 July 1948 such that the original dwellinghouse can be construed to be the main part of the existing dwelling.

12. The 'original' building was the cottage and the barn but there is insufficient precise and unambiguous evidence to conclude that the barn element was part of the original dwellinghouse as it existed on 1 July 1948. About half of the proposed rear extension would not be an extension of the original dwellinghouse and the rear extension would not thus be development permitted by Class A of Part 1 of Schedule 2 of the GPDO.

13. The proposed side extension falls to be considered under clause (j) of Class A, which provides that development is permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. The side elevation would satisfy the dimensional criteria also set out in clause (j) but it would not extend beyond a wall forming a side elevation of the original dwellinghouse, because the wall to which it would be attached was the side elevation of the 'barn', which has been found not to have been part of the original dwellinghouse. The side extension would not thus be development permitted by Class A of Part 1 of Schedule 2 of the GPDO.

14. The Council accepts that the proposed swimming pool building satisfies the dimensional criteria set out in clauses to Class E of Part 1 of Schedule 2 of the GPDO. They also accept that all elements of the building, such as the swimming pool, the sauna and the plant room, can be considered to be incidental to the enjoyment of the dwellinghouse. They claim, however, that the building would not be development permitted under Class E because it would include a sun lounge, which they consider to be primary living accommodation and therefore not incidental to the enjoyment of the dwellinghouse.

15. The Council provides no justification for, or evidence to support, this claim, other than an extract from the April 2016 edition of the Technical Guidance to the GPDO. With reference to this extract the sun lounge is not a bedroom, bathroom or kitchen and is not a habitable room that could be considered to provide primary living accommodation. In this case it would be incidental to the primary use of the swimming pool and can therefore, as a small element of the otherwise incidental uses of the building, also be considered to be incidental to the enjoyment of the dwellinghouse. The swimming pool building would thus be development permitted by Class E of Part 1 of Schedule 2 of the GPDO.

Conclusion

16. The proposed rear and side extensions to the dwelling would not be development permitted under Class A of Part 1 of Schedule 2 of the GPDO and the appeal therefore fails in so far as it relates to these two elements of the application. The proposed swimming pool building within the curtilage of the dwelling would be development permitted under Class E of Part 1 of Schedule 2 of the GPDO and the appeal therefore succeeds in so far as it relates to this element of the application.

17. For the reasons given above, and having taken all other matters into account, the Council's refusal to grant an LDC for proposed rear and side extensions to Moss Grove Cottage, Wood Lane, Lathom, Ormskirk was well-founded, but their refusal to grant an LDC for a proposed swimming pool building

within the curtilage of the dwelling was not well founded. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

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18. The main issues are; first, whether the proposed replacement dwelling would be an inappropriate form of development in the Green Belt, within which the appeal property is located; and second, the effect of the replacement dwelling on the character and appearance of the locality.

The first issue – inappropriate development

19. Policy GN1 of the West Lancashire Borough Local Plan (LP), which is the Development Plan for the area, states, amongst other things, that development proposals within the Green Belt will be assessed against national policy. Paragraph 89 of the National Planning Policy Framework (NPPF) states that the construction of new buildings in the Green Belt is inappropriate unless it is, amongst other things, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

20. The Council has adopted, in October 2015, a Supplementary Planning Document 'Development in the Green Belt' (SPD). SPD policy GB1 sets out criteria to be followed for replacement dwellings. One of these criteria is that the total volume of a replacement dwelling should be no more than 20% greater than the dwelling it replaces. The justification provided for the policy includes the provision that 'any unused permitted development rights on the existing dwelling will not be taken into account in volume calculations'. But the Appellant has pointed out that Court judgements indicate the opposite; that the possibility of implementing unused permitted development rights is a material consideration. The SPD has not been subject to formal examination and does not outweigh established case law but it is a material consideration.

21. The LDC application was submitted to establish permitted development rights that could be exercised if planning permission for the replacement dwelling was not granted, and which could be a material consideration in calculations to compare the volumes of the existing and proposed dwellings. The Council granted an LDC for a side extension to the dwelling but the appeal against their refusal of two other extensions to the dwelling, considered in this Decision, has failed and these proposed additions cannot be taken into account. The existing elements of the existing dwelling that they would replace will, however, be taken into account.

22. With regard to the relevance of the proposed swimming pool building, which would be permitted development and for which an LDC has been granted in this Decision, the SPD is contradictory and confusing. It states that detached outbuildings will not be included as part of the volume of the existing dwelling, but then goes on to state that if outbuildings of substantial construction are to be demolished an extra allowance may be made in terms of the increase in volume of the proposed dwelling. There appears to be some acceptance in the SPD that outbuildings may be taken into account in volume calculations. The SPD does state, in this regard, that the extra volume permitted under this 'allowance' will typically be less than the volume of the outbuildings to be demolished. There is, with regard to unimplemented permitted development rights and given that a swimming pool is included in the proposed dwelling, a genuine likelihood that the swimming pool building would be constructed if the Appellant was to renovate the existing property. It would be reasonable, therefore, in line with the SPD and

taking into account the aforementioned case law and the likelihood of the swimming pool building being constructed, to have regard to this building in volume calculations. In this regard it is worth noting that the size of the proposed dwelling is greater than it would be if the swimming pool was to be omitted.

23. The existing dwelling for the purposes of volume comparison is the existing building, about 870 cubic metres, plus the unimplemented permitted side extension development of about 63 cubic metres for which the Council has granted an LDC. The swimming pool building would be about 690 cubic metres, but in line with the SPD only half of this volume will be included in the overall calculation. The 'existing' dwelling, for the purposes of the calculation only, is therefore 1278 cubic metres. The SPD provides for a replacement dwelling to be up to 20% greater in size so such a dwelling on the appeal property could be up to 1533 cubic metres. The proposed dwelling would have a volume of 1585 cubic metres. The inclusion of only half of the swimming pool building in the calculation is somewhat arbitrary and the pool building could, within permitted development rights, be larger than as proposed. The 52 cubic metre difference between the 'existing' and proposed dwellings is therefore not considered to be a material difference.

24. The proposed dwelling would not be materially larger, taking into account unimplemented permitted development rights and the criteria of the SPD, than the 'existing' dwelling that it would replace. The proposed dwelling is thus not inappropriate development in the Green Belt and, in this regard, accords with LP policy GN1 and national policy in the NPPF.

25. Though the Council's reasons for refusal of the application do not refer to any potential harm caused by loss of openness they have referred to this matter in their appeal statement. There is no reason to doubt the Appellant's assertion that if the appeal is unsuccessful he would renovate the existing dwelling and implement permitted development rights including the construction of a detached swimming pool building. The proposed dwelling would be comparable in size to the buildings on the property if it was to be renovated and enhanced under permitted development rights so the proposed development, taking into account a suggested and accepted condition that would withhold permitted development rights, would not result in any loss of openness in the Green Belt. The Council, furthermore, accepts that "As the site is already occupied by a dwelling there is a neutral impact on the purposes of including land in the Green Belt".

The second issue – the character and appearance of the locality

26. The existing dwelling is in a remote location in a flat landscape. Trees on the site, which are not protected under a Tree Preservation Order and which could be removed irrespective of the outcome of the appeal, screen the dwelling to some degree but it is, given the openness of its location, prominent in the landscape. The proposed dwelling would be no higher than the existing dwelling and, given that it would be compact compared to the existing dwelling and a potential future detached swimming pool building, it would be no more visible in the landscape than the existing dwelling. The proposed dwelling would be in a different location on the property than the existing dwelling but this is not a significant factor.

27. The proposed development includes extensive landscaping, including hard landscaping, but any redevelopment of the property could include landscaping and the site itself is only visible in close views. The landscaping of the site would have no effect on the character of the wider locality. The proposed dwelling, which would have a flat roof, would be uncompromisingly modern in design, style and

form. The Council has not commented on these aspects of the proposed dwelling and there is no reason to suppose that a modern dwelling would have a significantly different effect on the character of the locality than a dwelling of vernacular design. The dwelling would not be unduly incongruous or overly prominent in the landscape.

28. The proposed development, with the imposition of suggested conditions to control such matters as landscaping, boundary treatment and building levels, would not be harmful to the character and appearance of the locality. The development thus accords with LP policy GN3.

Conditions

29. The Council has suggested eighteen conditions which are accepted by the Appellant. The conditions have been amended and/or combined in the interests of precision and clarity and to satisfy the tests set out in the National Planning Practice Guidance. Imposed condition 11 requires the prior approval and implementation of hard and soft landscaping works. Suggested conditions relating to hard surfacing of the first part of the access and parking and turning areas are subsumed into this landscaping condition. A suggested condition relates to a 'bank' and to 'protection of this zone' but it is not clear from the Council's statement what feature of the site the condition is referring to. Condition 11 requires the prior approval of a comprehensive landscaping scheme and it can be assumed that the bank and its protection would be considered in this scheme.

30. Condition 1 is the standard time limit condition, conditions 2 and 3 are for the avoidance of doubt, conditions 4 and 5 are in the interests of highway safety, and condition 6 will ensure that the development has a satisfactory appearance. Condition 7 is in the interests of the water environment, conditions 8 and 9 are in the interests of the ecology of the area, condition 10 is required to prevent the spread of invasive plant species, condition 11 will ensure that the development is satisfactorily landscaped and condition 12 is necessary to prevent otherwise permitted development being carried out on the site.

Conclusion

31. The proposed dwelling would not be materially larger than the 'existing' dwelling that it would replace, is thus not inappropriate development in the Green Belt, and would not be harmful to the character and appearance of the locality. The proposed dwelling complies with the LP and with national policy in the NPPF. Planning permission has therefore been granted, subject to conditions, for demolition of existing dwelling and replacement with one detached dwelling, associated landscaping and new access at Moss Grove Cottage, Wood Lane, Lathom, Ormskirk.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 18 March 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The detached pool house is development permitted by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

John Braithwaite

Inspector

Date: **9 January 2017**

Reference: APP/P2365/X/16/3151131

First Schedule

Detached pool house

Second Schedule

Land at Moss Grove Cottage, Wood Lane, Lathom, Ormskirk L40 4BW

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations 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, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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.

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **9 January 2017**

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Moss Grove Cottage, Wood Lane, Lathom, Ormskirk L40 4BW

Reference: APP/P2365/X/16/3151131

Scale: not to scale

