

Appeal Decision

by T Shields DipURP MA MRTPI

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

Decision date: 16 February 2017

Appeal Ref: APP/W0530/X/16/3150563

10 Church Road, Teversham, Cambridgeshire, CB1 9AZ

- 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 Mr Jonathan Barker against the decision of South Cambridgeshire District Council.
 - The application Ref S/0537/16/LD, dated 11 February 2016, was refused by notice dated 22 April 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is the proposed construction of two additional rooms attached to a garden building known as The Piggery.
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Decision

1. The appeal is dismissed.

Main Issue

2. The proposed development subject of the appeal is to extend an existing garden building (the Piggery) at either end to form two additional single storey elements.
 3. At one end the extension would comprise a small shower room/wc, lobby, and gymnasium. At the other end the extension would comprise a lobby and a games room. The roof of the existing building would be linked to the new elements at each end by a small flat roof, and the gymnasium and the games room would each have a symmetrical crown roof.
 4. While The Piggery has a dual-pitched roof in excess of 4 metres in height, no part of the proposed extension would exceed that height.
 5. The works as proposed constitute 'development' within the meaning of section 55 of the Act and as such require planning permission. No argument is made to the contrary.
 6. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. This turns on whether the proposed development benefits from planning permission for "*buildings etc incidental to the enjoyment of a dwellinghouse*" granted by Article 3 and Schedule 2, Part 2, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order").
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Reasons

7. The relevant part of Class E of the Order grants planning permission for:

The provision within the curtilage of the dwellinghouse of -

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.

8. However, the Class E planning permission is limited so as to exclude any development that fails to meet any of the criteria set out at E.1. (a) to (j). The only one of those criteria in dispute between the parties is (e)(i) which states that development is not permitted by Class E if the *"height of the building would exceed four metres in the case of a building with a dual-pitched roof"*.
9. The appellant argues that the words "would exceed" refers only to new buildings, and thus does not preclude the proposed works of extension.
10. The parties have not referred me to any case law or Ministerial advice on this issue. However, a "building" is defined¹ in the Order as *any structure or erection* and includes *any part of a building*. To my mind, there is no doubt that adding the two elements of the proposed extension to The Piggery would have the effect of providing an enlarged single building. Furthermore, I consider that on a plain reading of the text the terms of the planning permission available in E.(a) are clear. It refers to the provision within the curtilage of the dwellinghouse of *"(a) any building.."*
11. Additionally, the words "would exceed" in (e)(i) must also carry their ordinary meaning in the context of the sentence of which they are part. The use of the conditional verb indicates that it is referring to a hypothetical situation in the future; that being the situation that would exist after a proposed development had taken place.
12. The effect of E.1(e)(i) is, therefore, to exclude the development described in E.(a) if, after that development were to take place, the height of the building would have a dual pitched roof in excess of 4 metres. That is the case with the The Piggery, notwithstanding that the proposed works of extension by itself would not make it any higher than it is already. The proposed development does not therefore benefit from the planning permission granted by the Order.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the proposed construction of two additional rooms attached to a garden building known as The Piggery at 10 Church Road, Teversham, Cambridgeshire, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

¹ Article 2 of the Town and Country Planning (General Permitted Development) Order 2015