

Appeal Decision

Site visit made on 30 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 02 June 2017

Appeal Ref: APP/M3645/X/17/3167154

Westfield, Nethern Court Road, Woldingham, Caterham CR3 7EF

- 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 and Mrs K Gallagher against the decision of Tandridge District Council.
 - The application Ref 2016/1847, dated 5 October 2016, was refused by notice dated 9 December 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a single storey extension to south elevation incorporating bay window to east elevation.
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Decision

1. The appeal is allowed and a Lawful Development Certificate is issued.

Background information

2. The appeal property, 'Westfield', is a two-storey detached dwelling house located to the south east of Nethern Court Road in Woldingham. It is accessed via an un-made up track from the main road and is set within a large plot together with a detached garage. It sits at a slight angle to the road and its front elevation (east) is now acknowledged to be its principal elevation. It is not a listed building and does not lie within a conservation area. It is, however, located within the Metropolitan Green Belt (MGB) in this part of Caterham.
 3. Since 1987 various permissions have been granted to extend the property. These include a first floor extension over the garage (1987); the erection of a triple garage, the detached garage (1992); dormer roof extensions (2000) and a single storey front extension (2016). In 2016 Prior Approval (PA) was refused for a larger extension and an application for a Certificate of Lawfulness (LDC) for a single storey extension to the southern elevation was refused in October 2016.
 4. This appeal LDC application relates to a similar proposed single-storey extension projecting from the southern elevation. The wall of this extension would be set back 0.7m from the front main wall. Midway along this new wall a proposed bay window would project forward of it to align with the front main wall.
 5. The previous PA and LDC applications were made on the basis that the south elevation was the rear elevation to the property, making the north elevation the front or principal elevation. The main entrance to the house is now on this northern elevation. However the Council considered that the east elevation was the front, or principal, elevation and this appears to have housed the original front
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door to the dwelling as shown on the 1987 application (reference 87/395). During my site visit I was not able to access the site but did manage to view the property over the top of the high timber gate. I was also able to view the access track to this property and others off this part of Nethern Court Road. In relation this LDC application it was not necessary for me to inspect the house.

6. It is now agreed that this LDC application is for a side extension which is considered by the appellants to be lawful by virtue of the provisions of Class A, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). It is on this basis that I have dealt with the appeal. The Council and the appellants are in agreement that the proposal meets all of the various permitted development requirements, with the exception of A.1 (e) in Part 1, Class A of the GPDO. I have no reason to disagree that this is the sole issue.

7. In its decision notice the Council referred to Part 2 Schedule 2. However, this was clearly a typographical error and the council's case is that the proposal is not permitted under Part 1, Schedule 2, Class A.1 (e) of the GPDO because in their view, the enlarged part of the dwelling house would extend beyond a wall which forms the principal elevation of the original dwellinghouse.

Reasons

8. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the local planning authority's reason for refusal and then deciding whether or not the reasons are well founded. The planning merits of the case do not fall to be considered. In this case the question to be asked is whether or not the single storey side extension would have been lawful for planning purposes on the date of the LDC application, 5 October 2016.

9. The GPDO, in Class A of Schedule 2, Part 1, sets out permitted development rights for development within the curtilage of a dwelling house. At A.1, '*Development not permitted*' is then set out under 11 headings, (a) to (k). At (e) it is stated that if '*the enlarged part of the dwelling house would extend beyond a wall which – (i) forms the principal elevation of the original house; or (ii) fronts a highway and forms a side elevation of the original dwelling house*', development is not permitted by Class A.

10. The Department for Communities and Local Government's Technical Guidance - Permitted Development for Householders April 2017 (TGPDH), gives an explanation/interpretation of the rules set out in the GPDO and how they are intended to be applied. In reaching my conclusions I have taken the TGPDH into account and applied it to the specific physical situation at the appeal property.

11. The TGPDH sets out various definitions and two are most relevant in this case. The first is the word '*Existing*'. This is stated to mean a building (in this case the dwellinghouse known as 'Westfield') as it existed immediately before the permitted development (for example a house extension) is undertaken. In this case it is the date of the LDC application. The guidance also states that '*the existing house will include previous development to the house, whether undertaken as permitted development or as development resulting from a planning permission from the local authority*'. The second word is '*Original*'. This is stated to mean '*a building as it existed on 1 July 1948 where it was built before that date and as it was built if built after that date*'.

12. In this case there is no dispute that the '*existing*' dwelling is that shown on the drawing Job Number 3318/2 dated March 2016. This plan incorporates

alterations to the house since 1987. The dwelling was not built prior to 1 July 1948 and the Council and the appellant refer to the 1987 application plan as being the '*original*' plan of the house as existing at that time. There is nothing before to suggest that this was not the case and I have dealt with the appeal on that basis.

13. On behalf of the appellant it is indicated that, as originally built (to the 1987 existing plan), the house had a recess at ground floor level with a first floor overhang supported by a brick pier. This recessed area was in the south east corner of the building with the pier being at the junction of the ground floor east and south elevations. Thus, there was a section of wall to the original east elevation which was set back from the first floor level above and the corner brick pier. This set-back section of wall appears to have housed a door and windows to what was then the dining room.

14. By 2016, as shown on the '*existing*' plan, this former dining room wall had, in effect, been moved outwards to align with the original kitchen wall and the dining room became a breakfast room (with a fixed window) as an extension to the kitchen. The extension, the subject of this LDC appeal, is set back 0.7m from the south east corner of the house. Approximately midway along the east wall of the extension, a bay window is shown on the proposed plan (Job Number 3318 Rev A – April 2016).

15. This proposed bay window would extend beyond the line of the recessed section of the east elevation. The Council's position is, therefore, that the development proposed is not permitted because part of the new extension (the bay window) would project forward of the former recessed wall which, although set back, was part of the east elevation of the original dwelling house.

16. The wording in Class A.1(e) (i) refers to extending beyond a wall which '*forms the principal elevation of the original dwelling house*'. The word '*forms*' is in the present tense and would relate to the time at which the LDC application was made. This part of the GPDO does not use the word '*formed*', which is how the Council seemed to have interpreted the situation.

17. However, I consider that there is a more fundamental point relating to the '*original*' principal elevation and whether or not the new extension would extend beyond a wall which formed a part of it. In my view, the original principal elevation must be considered in its entirety and on the basis of the 1987 drawings. With the corner brick pier and the former kitchen aligning with the first floor elevation and gable above, despite the recess, the eastern (principal) elevation would have been perceived, as a matter of fact and degree, as being in one main plane or façade.

18. I accept that this main facade had a recessed section and that this part of the external wall to the house wall formed part of the eastern elevation. However, I consider that if a LDC had been applied for in 1987, the starting point for what would need to be considered as the building line of the principal original elevation would have been the outer face of the corner column and the faces of the kitchen wall and upper floor walls.

19. My view in this respect is reinforced by the fact that the wording in part (e) (i) states: '*forms the principal elevation of the original house*' as opposed to just any part of that elevation. The principal elevation of the '*original*' house

had, at its most eastern extremity the face of the brick pier, the face of the kitchen wall and the face of the upper walls. The line of the recess was behind this main part of the principal elevation. It is not reasonable, therefore, to consider the recessed wall as the starting point in relation to any part of the proposed extension as extending beyond the principal elevation. In this case I consider that the proposed enlargement would not, as a matter of fact and degree, extend beyond the principal elevation of the original dwelling house.

20. With regard to A.1 (e) (ii), this does not appear to be questioned and having seen the relationship of the house to the track and Nether Court Road itself, I do not consider that the house can be said, as a matter of fact and degree, to front a highway.

21. In conclusion, therefore, I do not consider that the Council's decision to refuse to grant a LDC was well-founded. A LDC is issued accordingly.

Other Matters

22. I have noted the other LDC appeal decisions referred to on behalf of the appellants. However, these have not assisted me in reaching my decision. In any case these relate to different sub-sections of Class A.1 and each LDC appeal must be considered on its merits and in relation to the plans and documents submitted at the time of the application. That is how I have dealt with this case, having had regard to all of the submissions.

23. In reaching my decision I have taken into account all of the other matters raised by the Council. These include the planning history of the site, the delegated report and the Council's detailed statement. However, none of these carries sufficient weight to alter my conclusions and nor is any other factor of such significance so as to change my decision.

Formal Decision

24. I allow the appeal and attach to this decision a Lawful development Certificate describing the proposed operations which I consider to be lawful.

Anthony J Wharton

Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 5 October 2016 the operations described in the First Schedule hereto in respect of the land/property specified in the Second Schedule hereto, were lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operational development is permitted by virtue of Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Anthony J Wharton
Inspector

Date: 02 June 2017

Appeal Reference: APP/M3645/X/17/3167154

First Schedule

The erection of a single storey extension to the south elevation, incorporating a bay window to the east elevation (to be in accordance with drawing 'Job Number 3318 dated March 2016, Rev A dated April 2016').

Second Schedule

Westfield, Nethern Court Road, Woldingham, Caterham CR3 7EF

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 on the land/property 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.

This certificate applies only to the extent of the operations described in the First Schedule and to the land/property specified in the Second Schedule. 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.