

Appeal Decision

Site visit made on 23 May 2017

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

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

Decision date: 06 June 2017

Appeal Ref: APP/G2815/X/17/3166920

5 St Anns Court, Oundle, Peterborough PE8 4DS

- 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 Anne Dann against the decision of East Northants District Council.
 - The application Ref 16/02141/LDP, dated 2 November 2016, was refused by notice dated 19 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 two storey rear extension.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the development which is considered to be lawful.

Reasons

2. 5 St Anns Court is a detached two storey dwelling that is, at this time, being altered and extended. When the application was submitted the erection of the two storey rear extension had not been commenced but it was well on the way to completion at the time of the site visit. Nevertheless, the two storey rear extension will be considered on the basis that it is a proposed development.
 3. The rear extension is being constructed on the Appellant's understanding that it is development permitted under the provisions of Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council accepts that the extension complies with all of the criteria and conditions of Class A other than with criterion (i). To satisfy this criterion the extension must not be within two metres of the boundary of the curtilage of the dwellinghouse where its eaves height exceeds 3 metres. The side wall of the extension is not within 2 metres of the boundary of the curtilage but the extended eaves of the roof of the extension is within 2 metres of the boundary and exceeds 3 metres in height above ground level. For this reason the Council maintains that the extension does not comply with criterion (i) of Class A and that the extension cannot therefore be regarded to be development permitted under the provisions of Class A of Part 1 of Schedule 2 of the GPDO.
 4. The Technical Guidance to the GPDO refers to 'any part of a proposed extension' and the Council regards the extended eaves of the roof to be a part of
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the extension. There is no diagram to illustrate the guidance on criterion (i) but there are many diagrams in the document to illustrate other dimensional criteria of permitted extensions. The diagrams and text of the guidance consistently refer to 'walls' as being the outer limits of permitted development. Furthermore, it is common practice for buildings to be measured, for setting out purposes and to assess their ground coverage for instance, to the outer faces of their external walls. Measuring a building by taking into account eaves overhangs and gutters, in this regard, is imprecise. In addition, an eaves overhang of a building or extension does not result in the building or extension being any higher than it would be without the overhang. For all these reasons it is reasonable to assume that 'any part' of an extension refers to any external wall of the extension and it is reasonable to conclude that the eaves overhang of the rear extension at the appeal dwelling can be disregarded to assess whether the extension complies with the provisions of Class A of Part 1 of Schedule 2 of the GPDO.

5. No material part of the two storey rear extension at 5 St Anns Court is within 2 metres of the boundary of the curtilage of the dwellinghouse, the extension therefore satisfies criterion (i), and can thus be regarded to be development permitted under the provisions of Class A of Part 1 of Schedule 2 of the GPDO.

Conclusion

6. For the reasons given above, and on the evidence now available, the Council's refusal to grant a certificate of lawful development in respect of a proposed two storey rear extension at 5 St Anns Court, Oundle was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

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 2 November 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The extension is development permitted under Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

John Braithwaite

Inspector

Date: 06 June 2017

Reference: APP/G2815/X/17/3166920

First Schedule

Two storey rear extension

Second Schedule

Land at 5 St Anns Court, Oundle, Peterborough

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 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, 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 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.
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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 June 2017

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Scale: not to scale

