
Appeal Decision

Site visit made on 20 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/N4205/X/16/3165889

Wanstead, Longworth Lane, Egerton, Bolton BL7 9QY

- 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 Proposed Use or Development (CLOPUD).
- The appeal is made by Mr Garry Fogg against the decision of the Bolton Metropolitan Borough Council.
- The application, Ref: 97673/16, dated 14 October 2016, was refused by notice dated 8 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 CLOPUD is sought is a proposed detached double garage to be built to the rear of the house.

Summary of Decision: The appeal is dismissed.

Background

1. The appeal property is a large semi-detached dwelling, of varying height, situated on the north-eastern side of Longworth Lane. It is attached, on its south-eastern side, to Bank House, a substantial Victorian house, and was previously ancillary accommodation for that property, including attached stables. The appellant is seeking a CLOPUD for a detached double garage located, within the curtilage of Wanstead, to the north-east of his house. An existing detached two-storey garage, with storage underneath, substantially occupies the area within which it is proposed to build the new garage, but this is the subject of an extant enforcement notice which requires its removal. The curtilage of Wanstead includes a large terraced garden stretching to the north-east as far as Blackburn Road.

The Case for the Appellant

2. The appellant contends that the proposed garage would be permitted development having regard to Class E of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO). Contrary to the Council's decision, the location would not be in front of the principal elevation of the dwelling, neither would it be located within 2m of the curtilage boundary.
 3. A number of conflicting factors need to be assessed in relation to the question of which is the principal elevation of the house, but all point towards it being the south-western elevation of the property, facing Longworth Lane, as it fronts a highway, is the main vehicular and pedestrian access for the house, and contains the most prominent architectural features.
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4. As for the siting of the proposed building in relation to the boundary, the application plans clearly show that it would be no closer than 2m from the north-western boundary thus the relevant criterion of Class E would be met. In all of these circumstances a CLOPUD should be granted as the proposed garage does not need a specific grant of planning permission.

The Case for the Council

5. The Council contend that the proposed development does require planning permission because it fails to meet the terms of Class E of Part 1 of Schedule 2 to the GPDO in two ways. Firstly, having regard to the definition given by the Department in their Technical Guidance on Permitted Development¹ (TG), the Council considers that the principal elevation of the house is that on its north-eastern elevation as it contains the main architectural features of the property, such as the porch, entrance door, bay windows and date plates. Moreover, their view on this matter is supported by a recent appeal decision² where the Inspector found that the principal elevation was not that fronting the highway.
6. In addition, the proposed garage would not be development permitted by Class E, as it would be within 2m of the boundary and over 2.5m in height. Using the plans submitted by the appellant, elevations show that the highest part of the garage would be 3.3m above ground level, and that its rear corner would be 1.81m from the nearest part of the boundary. For all of these reasons the proposed development requires a grant of planning permission and the application for a CLOPUD should be refused.

Appraisal

7. The main issue in this appeal is whether the proposed detached double garage would be permitted development under the terms of Class E of Part 1 of Schedule 2 to the GPDO. In considering this issue, it is necessary to state at the outset that the planning merits of the development are not before me in this appeal, only the question of whether or not the construction of a detached double garage in the position shown on the application plans would have been lawful at the date of the application for a CLOPUD. Furthermore, I draw attention to the fact that the burden of proof in an appeal on legal grounds such as this lies with the appellant, having regard to national procedural guidance³, as referred to in the Planning Practice Guidance, and pertinent case law⁴, with the relevant test being on the balance of probabilities⁵.
8. The starting point for my consideration is the precise wording of Class E of Part 1 of Schedule 2 to the GPDO, so far as it is relevant to the structure that is proposed to be built. This Class permits "*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; or, (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas*".

¹ Permitted development rights for householders. Technical Guidance. Department for Communities and Local Government, April 2017.

² CLG Ref: APP/Y3615/X/16/3146044.

³ Annex E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.

⁴ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁵ *Thrasivoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

9. There are, however, some exceptions and qualifications to these permitted development rights, as set out in Class E.1. This states that development is not permitted by Class E if, amongst other things, *"(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse"*, and, *"(e) the height of the building, enclosure or container would exceed ... (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse"*.
10. Two matters therefore need to be considered – the question of the principal elevation of the dwellinghouse, and the proposed siting of the building in relation to the boundary of the curtilage.
11. On the first matter, the term "principal elevation" is not defined in the GPDO but the TG issued by the Department to assist in its interpretation states that, *"in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation"*.
12. Applying this guidance to the appeal property it is clear that the principal elevation can only be either the south-western elevation, fronting Longworth Road, or the north-eastern elevation, which faces the substantial garden and curtilage of the house. There is only one other elevation, in this semi-detached property, on its north-western side, but this is a very minor gable end to a single-storey part of the overall dwelling, containing only two windows. No suggestion has been made by either party that it could be the principal elevation.
13. The appellant's case is based upon a number of "key" determining factors, including that the principal elevation should be a wall, in the singular. On this matter, however, the appellant is misguided. The TG clearly states that *"where the principal elevation comprises more than one wall facing in the same direction, all such walls will form part of the principal elevation, and the line for determining what constitutes 'extends beyond a wall' will follow these walls"*. A diagram illustrates that point. The other factors – the relationship to the main highway, the main architectural features, and the main bay windows or porch serving the main entrance – are, however, pertinent and I will consider them in due course.
14. The main highway serving Wanstead is clearly Longworth Lane. There is a small gate in the wall that faces Blackburn Road, but it appears to be unused and all vehicular and pedestrian access is made through an automatic gate at the north-western corner of the curtilage of the property. The south-western elevation fronting Longworth Lane has two elements to it. Firstly, there is a three-storey gable-end to the main part of the overall dwellinghouse, with windows on all three floors. Beyond, to the north-west, but on the same building line, is a single-storey former stable block that has been converted to

form additional residential accommodation as part of the dwelling. This has three windows facing the road. A number of downpipes from guttering are positioned against this elevation, and there are also various vents from boilers and a toilet which are positioned internally against this elevation.

15. The north-eastern elevation faces the terraced garden, which includes a paved area used for parking, to the north-east of which is the existing, unauthorised, two-storey garage and store. This elevation has a number of sections, and a series of walls. The part that adjoins Bank House is of three-storeys, including a projecting gable-ended section which has a large bay window facing the garden, with the date of 1878 set into the lintel above. To the left of this, when looking towards the elevation, is a door that provides access to the hallway and main staircase of the dwelling. This door, with a letterbox, has the appearance of being the main door of the residence. The single-storey converted stable block, including the former door, with the date of 1884 in its lintel, runs from the rear part of the projecting three-storey section, and there is a large conservatory in the corner area between these two parts of the overall dwelling. The door into the conservatory appears to be used now as the main entrance for the house, although it has no letterbox. There is, however, a separate receptacle for post outside the main gate.
16. In comparing the south-western and the north-eastern elevations of Wanstead, I have no doubt that it is the latter that is the principal elevation of the dwelling. It contains the main architectural features of the house, including the large bay window, the original front door and two date plates. This elevation is not a single wall, rather a series of walls, but that is of no relevance in this matter for the reasons given above. The south-western elevation is clearly subsidiary and of little architectural significance. It also contains no entrance to the dwelling. It may front the main highway leading to the house, but it is not the principal elevation and it is significant that the relevant part of the TG uses the words "*in most cases*" as it clearly envisages exceptions such as that before me in this appeal, and as also shown in the appeal decision submitted by the Council. It follows, therefore, that the construction of a garage in the position shown on the application plans would not be permitted development under Class E, as it would be situated on land forward of a wall forming the principle elevation of the original dwellinghouse.
17. Turning to the second matter, I have examined the plans submitted in support of the application for a CLOPUD. Drawing No WG/CL/16/001A is a plan showing the position of the proposed garage in relation to the northern boundary of the appeal property. There is no suggestion that this boundary is not also the curtilage of the dwelling. The boundary, which is irregular, is formed in part by a high wall that separates the appeal site from much lower land to the north. A dimension of 2m is shown on the plan, but it is not at the closest position of the proposed garage to the boundary, as the wall is angled towards the north-western elevation of the intended building. Therefore, at its northern corner, it would be closer than 2m being, on my scaling of the plan, as close as about 1.6m to the outer edge of the boundary.
18. A second application plan, drawing No WG/CL/16/002, shows the side and front elevations of the proposed garage building. A dimension of 3.3m is given for the overall height of the structure as measured at the front of the building, which is the highest ground level immediately adjacent on a site where the land falls steeply to the north-east. As the proposed building would be of a

height of 3.3m within 2m of the boundary of the curtilage of the dwellinghouse, it would fail to meet the criteria set out in Class E.1.(e) thus it would not be permitted development for this additional reason.

Conclusions

19. For the reasons given above I conclude that the Council's refusal to grant a CLOPUD in respect of a proposed detached double garage to be built to the rear of the house was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.

Other Matters

20. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

FORMAL DECISION

21. The appeal is dismissed.

Martin Joyce

INSPECTOR