
Appeal Decision

Site visit made on 23 May 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 25 July 2017

Appeal Ref: APP/V1505/W/17/3169181

Chase End, Broomhills Chase, Little Burstead, Billericay, Essex CM12 9TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Lee Knieriem against the decision of Basildon District Council.
 - The application Ref 17/00127/PDPA, dated 2 February 2017, was refused by notice dated 3 February 2017.
 - The development proposed is single storey side/rear extension.
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Decision

1. The appeal is allowed and prior approval is not required under the provisions of Schedule 2, Part 1, Paragraph A4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for a single storey side/rear extension at Chase End, Broomhills Chase, Little Burstead, Billericay, Essex CM12 9TH in accordance with the details submitted pursuant to Schedule 2, Part 1, Paragraph A.4 (2) of the GPDO.

Procedural Matter

2. The Council's decision notice states that it does not consider that the proposal constitutes permitted development because it comprises a single storey side extension. The Council has subsequently acknowledged that the reason is not sufficiently clear and has confirmed that the application was refused because it considers that the proposal does not comply with paragraph A.1 (j) of the GPDO.
3. Having reviewed the appeal statements I considered that it necessary to give the parties an opportunity to make further submissions as to what bearing if any the High Court judgment in the Gary Hilton case¹ has on the issues in the appeal. I have taken those further comments into account in my decision.
4. As it had not carried out any consultation prior to refusing the application I also requested that the Council undertake consultation with the owners and occupiers of adjacent land before I issued my decision. No responses to that consultation were received by the deadline set for the submission of any representations.

¹ R (oao Hilton) v Secretary of State for Communities and Local Government (official Court transcript incorrectly cites Secretary of State for Home Department) [2016] EWHC.

Main Issue

5. The main issue is whether or not the proposal is permitted development under Schedule 2, Part 1, Class A of the GPDO.

Reasons

6. Class A provides that the enlargement of a dwellinghouse is permitted development provided that it falls within the limitations in paragraph A.1. Until 30 May 2019 the enlargement of a dwelling is permitted development under Paragraph A.1 (g) provided that the enlarged part would have a single storey, would not exceed 4 metres (m) in height and, in the case of a detached house, would not extend beyond the rear wall of the original dwelling by more than 8m. The proposal complies with these requirements.
7. Sub paragraph (j) states that such enlargement is not permitted if:
 - (j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—
 - (i) exceed 4 metres in height,
 - (ii) have more than a single storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse.

The Council asserts that the proposal does not comply with Paragraph A.1 (j) (iii) and is not, therefore, permitted development.

8. That judgement relies on the April 2016 edition of the Technical Guidance² which stated that references within the GPDO to the '*enlarged part of the dwellinghouse*' include any previous enlargements of the original house either already built or for which planning permission or prior approval has been given³. However, that interpretation was contradicted by the High Court judgment in the Gary Hilton case in 2016 which held that the term should properly be interpreted to mean only the enlargement that is the subject of the application under consideration. The 2017 edition of the Technical Guidance has been amended accordingly.
9. Following that judgment the GPDO has been revised to include Paragraph A.1 (ja), the effect of which is that the enlargement of a dwelling is not permitted development if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j). That amendment only applies only to applications made after 6 April 2017 and is not, therefore, relevant to the current proposal.
10. Accordingly the appeal must be considered on the basis that the '*enlarged part of the dwellinghouse*' comprises only the single storey side/rear extension now proposed and without reference to the rear addition for which prior approval was granted by the Council in 2015 (15/12398/PDPA). Because paragraph A.1 (ja) does not apply it is not relevant whether the appeal proposal would

² Department for Communities and Local Government: Permitted Development Rights for Householders Technical Guidance April 2016

³ Definition within the General Issues section of the Technical Guidance April 2016 Edition

physically be joined with the previously approved extension or separated from it by even a minor extent.

11. No detailed dimensions of the width of the proposed extension are shown on drawing No 15/40/5 but the plan is marked with a note specifying that its width is not to exceed 50% of the width of the original property. Provided that the extension is built in accordance with that specification it would comply with the limitation set out in paragraph A.1 (j) (iii). The proposal also complies with the other limitations set out in paragraph A.1 and is, therefore, permitted development.
12. Paragraph A.4 (5) of the GPDO requires that the local planning authority should notify each adjoining owner or occupier about the proposed development. Paragraph A.4 (7) states that, where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises. As no such objection has been received prior approval is not required.

Conclusion

13. For the reasons set out above I conclude that the appeal should be allowed.

Paul Singleton

INSPECTOR