
Appeal Decision

Site visit made on 20 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/K0425/X/17/3167829

Dingle Dell, Bigmore Lane, Horsleys Green HP14 3UP

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter “the Act”] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter “LDC”].
 - The appeal is made by Mr C Burnell against the decision of Wycombe District Council.
 - The application no: 16/06317/CLP, dated 10 May 2016, was refused by notice dated 23 September 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Erection of new front porch and erection of single storey extension following removal of existing extension.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Preliminary matters

3. The LDC application included a front porch as well as the erection of a single storey extension. In issuing its decision, the Council granted an LDC for the front porch. There is no need for me to consider that element further. I shall, therefore, focus upon the single storey rear extension in respect of which the Council refused an LDC and which remains a matter of contention between the parties.
4. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 10 May 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application¹ which, hereafter, I shall refer to as “the GPDO”. For ease of reading, however, I shall write in the present tense.
5. In April 2017 Government published “Permitted development for householders, Technical Guidance (April 2017)” [hereafter “the Technical Guidance”]. This updated an earlier version of the Technical Guidance (published 13 April 2016)

¹ The GPDO has since been subject to further amendments.

which is referred to in the appeal submissions. There are no material differences between the two versions insofar as the issues relevant to this appeal are concerned. It is the 2017 version to which I shall refer in this decision.

6. Whilst not a definitive statement of the law the Technical Guidance should, as a general rule, be followed unless there are clear reasons why it does not apply in the circumstances of any particular case.
7. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.

Main issue

8. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

9. The appeal property started its life as a caravan and, therefore, as a use of land rather than as a building. Over the years the caravan was extended and altered. It accrued a degree of permanence such that, in 2015, the Council granted an LDC for an existing use of the property as a dwellinghouse (Use Class C3).
10. It is common ground between the parties that, in principle, the property can take advantage of permitted development rights under Part 1² of Schedule 2 to the GPDO subject to compliance with its various limitations and conditions. Class A³ is the relevant class insofar as the single storey rear extension is concerned.
11. The property is located within the Chilterns Area of Outstanding Natural Beauty [hereafter "AONB"] and is, thus, on Article 2(3) land⁴. The limitations of paragraph A.2 therefore apply together with the general limitations set out in paragraph A.1. To be permitted development the proposed extension must comply with each and every limitation of both paragraphs together with the conditions set out in paragraph A.3.
12. The Council considers the development to fail under three of these limitations (A.1(j)(iii)⁵, A.2(b)⁶ and A.2(a)⁷). I shall consider A.1(j)(iii) and A.2(b) together as both concern the issue of whether the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse. A.2(a) concerns whether the development would consist of or include the cladding of any part of the exterior of the dwellinghouse which I shall deal with as a separate issue.

² Part 1 of Schedule 2 to the GPDO concerns "Development within the curtilage of a dwellinghouse". It provides for the carrying out of such development as permitted development subject to conditions and limitations.

³ Class A relates to the "enlargement, improvement or other alteration of a dwellinghouse".

⁴ The GPDO defines Article 2(3) land as land within (amongst other things) an AONB.

⁵ Under limitation A.1(j)(iii) the extension would not be permitted development if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would (amongst other things) have a width greater than half the width of the original dwellinghouse.

⁶ Under limitation A.2(b) the extension (being within an AONB) would not be permitted development if it would extend beyond a wall forming a side elevation of the original dwellinghouse.

⁷ Under limitation A.2(a) the extension (being within an AONB) would not be permitted development if it would (amongst other things) consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles.

Whether the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse

13. There is no dispute that the extension meets all of the limitations for a rear extension. The issue in contention is whether the extension is also a side extension. There is an existing projecting element positioned to the rear elevation of the caravan which takes up some (but not all) of its width and result in the side elevations being stepped.
14. In an AONB there are no permitted development rights for side extensions (A.2(b)). There is a general limitation (A.1(j)(iii)) which (amongst other things) limits side extensions to no more than half the width of the original dwellinghouse. In practical terms, A.1(j)(iii) is subsumed by A.2(b) although I shall consider both.
15. The baseline against which these limitations are set is the "original dwellinghouse". To determine whether the development complies or not with these limitations it is, first of all, necessary to understand what comprised the "original dwellinghouse".
16. Article 2, "Interpretation", of the GPDO states that the term "original", in relation to a building, means as it existed on 1st July 1948 or, if built later, the building as so built.
17. The caravan was not brought to the land until around 1960 so there is no suggestion that the "original dwellinghouse" pre-dates 1948. I cannot see that the caravan, to start with, constituted the "original dwellinghouse" because it was a use of the land and lacked the necessary degree of permanence to be a building. It is only because of the rear and side extensions that have been added and other alterations that have been carried out that the caravan has become a building over the passage of time.
18. The Council considers that the "original dwellinghouse" is the building as existed at the time it issued the LDC in 2015, the dwellinghouse at that time having its rear extension together with a side extension and other alterations. This seems to me to be a reasonable position to take in the absence of any other contrary evidence.
19. Thus, the rear projecting element was comprised within the original dwellinghouse. The side elevations of the original dwellinghouse were stepped.
20. The Technical Guidance, at page 23, explains that dwellings will often have more than two side elevation walls (in other words stepped side elevations) and that all side facing walls are to be taken into account in applying the permitted development criteria for side extensions. Further, at page 31, the Technical Guidance states that, in an AONB, extensions beyond "any side wall" are not permitted development. The proposed extension would, however, extend beyond the side facing walls of the existing rear projecting element, that being a part of the original dwellinghouse.
21. The appellant argues that the existing rear extension would be removed and that the new extension should be assessed in the context of the caravan without its existing rear extension. I do not accept that argument. The GPDO explicitly says that the limitations should be applied against the baseline of the "original

dwellinghouse". Case law⁸ has held, on this point, that where demolition of parts of the original dwellinghouse has occurred it should be disregarded for the purposes of applying the permitted development limitations. Irrespective of whether or not the existing extension is demolished the proposal must still to be assessed against it.

22. Thus, I find that the proposed single storey rear extension would also be a side extension because it would extend beyond walls comprised in the side elevations of the original dwellinghouse. The extension cannot be permitted development as it fails under limitation A.1(j)(iii), being more than half the width of the original dwellinghouse, and under A.2(b) because it is within an AONB where side extensions are not permitted.

Whether the development would consist of or include the cladding of any part of the exterior of the dwellinghouse

23. Whilst not specified in the application there is mention in the appeal papers to the extension being constructed in timber finished with plastic to match the external appearance of the caravan. In other words a plastic coating would be applied to a timber frame.
24. The appellant argues that "cladding" means to cloth or cover the outside of a building which already exists. However, when given its ordinary meaning, the term "cladding" could equally be used to describe the finish/es of proposed development as well as to describe a treatment for existing buildings. I cannot see that the GPDO gives any narrower meaning by limiting the term to the latter.
25. The GPDO applies the limitation to "the dwellinghouse" in its widest sense of which the enlargement would become a part. The GPDO does not say that the limitation applies only to the "existing" dwellinghouse. The Technical Guidance, at page 31, explains that in an AONB the cladding of any part of a house, whether it be the original house or any enlarged part, is not permitted development and requires an application for planning permission.
26. I acknowledge that the works would accord with condition A.3(a)⁹ which is a general condition requiring matching materials. However, for permitted development rights to apply the development must comply with all conditions and limitations of Class A.
27. The appellant argues that the proposal does not involve "cladding", but that it is construction in materials that match the existing dwelling. However, from the limited information I have regarding the method and materials to be used it appears to me that the works would amount to "cladding" in its commonly understood sense, that cladding being the putting on of plastic to the extension exterior. In these circumstances I conclude that the works would fail to comply with A.2(a).

⁸ Arnold v Secretary of State for Communities and Local Government [2015].

⁹ Condition A.3(a) of class A is that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

Other matter

28. The appellant has argued that the demolition of the rear extension would, in itself, be a permitted alteration to the dwellinghouse for which an LDC should be granted. If to be considered separately (rather than as part of the works to provide the replacement extension) then this raises the question of how the rear elevation of the caravan would be reinstated. In the absence of any information on this point I cannot be satisfied that the totality of the alteration would accord with the limitations and conditions of Class A. The burden of proof that is upon the appellant has not been satisfactorily discharged.

Conclusion

29. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the erection of a single storey rear extension following removal of the existing extension was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR