

Appeal Decision

Site visit made on 18 September 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/G2245/X/18/3214274

Beechmont Farm, Hubbards Hill, Weald, Sevenoaks, Kent TN13 1TR

- The appeal is made by Ben Swann under section 195 of the Town and Country Planning Act 1990 against a refusal by Sevenoaks District Council to grant a lawful development certificate.
 - The application Ref: 18/02359/LDCPR, dated 23 July 2018, was refused by notice dated 5 October 2018.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is a "Timber Pergola 2.4 metres high (6m long 4m wide) with timber decking at ground level and clear polycarbonate roof".
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the operations proposed would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me. The appellant's argument that the location chosen for the pergola is well-screened is therefore not a factor that can be taken into account.
 3. The Council refused the application because they considered the operations were not permitted by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class E permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to the limitations set out in E.1, E.2 and E.3. In the Council's opinion the pergola "would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse", contrary to limitation E.1(c).
 4. The term "principal elevation" is not defined in the Order. In normal usage it would refer to the main or most important elevation of the house. In the particular context of the Order, the guidance in the Government's publication *Permitted development rights for householders. Technical Guidance* is relevant.
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5. The guidance gives "an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances". It adds: "Given the very substantial variations in the design of individual houses, this guide cannot cover all possible situations that may arise".

6. On page 7, the guidance sets out what the Government understands to be meant by the term "principal elevation" in this context, as follows:

"- 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."

7. The guidance explains on page 6 that a "highway" is a public right of way such as a public road, public footpath and bridleway and that, for the purposes of the Order, the term also includes unadopted streets or private ways. It states that an unadopted street is a street not being a highway maintainable at the public expense.

8. The house is a single-storey four-sided building, which appears to be in its "original" form. There are no openings in the roof space. A garden surrounds the house, with a pocket of woodland to the west of it; a field forming part of the farm lies beyond the eastern boundary of the garden.

9. There are roads on three sides. Gracious Lane borders the northern side, but the house has no access of any kind from it, since this boundary is protected by fencing and hedging and the Lane has a banked verge next to it. A short length of Hubbards Hill lies to the west beyond the pocket of woodland; the house has no access from here. On the southern side is what appears to be an unnamed public road not maintained at public expense, which connects with Hubbards Hill to the west and serves the house, together with several other properties and farmland. The house has its only access from here; this is where the house's parking area, garage and two pedestrian gates are located.

10. The house is angled, so that its northerly and westerly elevations face partly towards Gracious Lane, its southerly elevation faces towards the unnamed road and its easterly elevation faces the field. The westerly and easterly elevations are the longer ones and they contain the two entrance doors to the house. The door in the westerly elevation is the larger of the two; it contains the letter box, has a canopy and leads to a hallway. Each door has its own pathway leading to it from one of the pedestrian gates and each has a doorbell.

11. The lounge has its windows in the westerly and southerly elevations. The dining room/kitchen has its windows in the easterly and southerly elevations. The northern end of the house contains bedrooms. There are no openings in the

- northerly elevation. It is clear that this elevation is not the “principal elevation” of the house.
12. When the guidance set out in paragraph 7 above is applied there is no very obvious conclusion as to which of the other three elevations is the “principal elevation”. The only road serving the house is the one on its southerly side. The house’s postcode applies to a group of properties off Hubbards Hill that are served by this road. The house has no bay windows or porches, but the size of the door, the canopy, the letter box and the hallway are features that point to the westerly elevation being more significant than the easterly elevation. However, neither the westerly nor the easterly elevation has a distinct appearance of being the front of the house. That description is more fittingly applied to the southerly elevation, since (i) it fronts the only road serving the house, (ii) it faces the parking area, garage, entrance gates and paths to the house, (iii) it contains significant windows, (iv) it is the only elevation fully exposed to public view and (v) it is the elevation that faces visitors arriving at the house.
 13. Having taken everything into account, I have come to the conclusion, on balance, that the southerly elevation of the house is its “principal elevation” in the sense in which this term is used in limitation E.1(c). However, this does not lead to the conclusion that the pergola could be erected as Class E permitted development in the location proposed. This is because the provisions of E.2 and E.3 apply here, since the house is within an area of outstanding natural beauty.
 14. E.2 precludes development under Class E within an area of outstanding natural beauty “if the total area of ground covered by buildings ... situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres”. Since the pergola would have a ground area of 24 square metres, of which more than 10 square metres would be situated more than 20 meters from the nearest wall of the house, its erection would be precluded by E.2.
 15. E.3 precludes development under Class E within an area of outstanding natural beauty “if any part of the building ... would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse”. It follows from my conclusion about the “principal elevation” that the easterly and westerly elevations are side elevations and the northerly elevation is the back of the house. The erection of the pergola in the proposed location would therefore be precluded by E.3, because it would be between a side elevation and the boundary of the curtilage.
 16. It seems to me that unless the pergola would be sited between the northerly elevation and the boundary of the curtilage, in a way that meets all the limitations in Class E, a specific planning approval will be required for its erection. However, that is a matter to be resolved between the appellant and the Council, since it is beyond the scope of this appeal. I have concluded that the operations as they are now proposed would not be lawful if begun at the time of the application for the certificate. I am therefore satisfied that the Council’s refusal of the application is well-founded. As a result, the appeal has been dismissed.

D.A.Hainsworth

INSPECTOR