
Appeal Decision

by S Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Appeal Ref: APP/N1920/X/19/3238215

63 Byng Drive, Potters Bar, Hertfordshire EN6 1UW

- 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 Susan Petch against the decision of Hertsmere Borough Council.
 - The application Ref 19/1357/CLP, dated 19 August 2019, was refused by notice dated 24 September 2019.
 - 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 an extension.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The header above correctly quotes the description of the proposed development set out on the application form. The decision notice issued by the Council revises the description, but that can only be done with the appellant's agreement where a LDC is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (the Act). As there appears to be no agreement regarding the amended description, I shall therefore consider this appeal as described on the application form.
3. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case it shall refuse the application.
4. Applying the terms of s192(2) of the Act to the appeal proposal, the Council determined the application for the extension against the provisions set out in Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) in that the proposed extension would extend beyond a wall which forms part of the principal elevation of the dwellinghouse.
5. In an appeal under s195 of the Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities. No site visit was made in this

case because the appeal turns on the interpretation and application of relevant law.

Main Issue

6. This is whether the Council's decision to refuse a LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under Schedule 2, Part 1, Class A of the GPDO.

Reasons

7. Under the provisions of Schedule 2, Part 1, Class A of the GPDO, a deemed planning permission is granted for the enlargement, improvement or other alteration of a dwellinghouse, subject to conditions and limitations. The Council determined that the proposed development would not have been lawful, at the time of the application, because the extension would extend beyond the wall which forms the principal elevation of the original dwellinghouse. The proposal would therefore not fall within the limits of permitted development (PD) as set out in Schedule 2 Part 1 Class A.1(e)(i) of the GPDO. There appears to be no disagreement that the extension complies with all the other limitations and conditions of Class A.
8. The appellant argues that there are two principal elevations which both face the highway and that the proposal does not extend beyond the wall that is fronting the highway. Guidance produced by the Department for Communities and Local Government *Permitted development for householders, Technical guidance* September 2019 (the Technical Guidance) clarifies in its definition¹ of the term "principal elevation", that there will be only one principal elevation on a house.
9. There is no dispute that the principal elevation faces the highway. The contention between the parties is what is considered to be the front wall of the principal elevation beyond which the proposed extension would extend. The GPDO itself provides no definition of "extend beyond a wall". On a plain reading of A.1(e) this phrase means forward of the face of the elevation. The Technical Guidance provides illustrations² to give further clarification. It explains that, in the context of A.1(e), the principal elevation could include more than one wall facing in the same direction. Where there is an 'L' shaped frontage, all such walls will form the principal elevation and any extension forward of these walls will not be permitted development.
10. The appeal property has a 'L' shaped footprint, with the projecting gable of one front bedroom and the set-back wall of the other front bedroom. In this case, both walls front the highway and together form part of the principal elevation. Accordingly, the line for determining what constitutes 'extends beyond a wall which forms the principal elevation of the original dwellinghouse' will follow both walls.
11. In these circumstances, the proposal would not fall within the limits of PD as set out in Schedule 2 Part 1 Class A of the GPDO.

¹ General Issues section Page 7

² Pages 14-16

Conclusion

12. For the reasons set out above, I conclude that the development would not benefit from deemed planning permission granted by the GPDO at the date of the LDC, and express planning permission would be required. Consequently, the proposed development would not be lawful and the Council's decision to refuse the LDC was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

S Hanson

INSPECTOR