



Appeal Decision

Site visit made on 10 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 14 April 2020

Appeal Ref: APP/D1590/X/18/3218947

93 Tattersall Gardens, Leigh-On-Sea, Essex SS9 2QZ

- 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 Mr Mark Flitter against the decision of Southend-On-Sea Borough Council.
 - The application Ref 18/00817/CLP, dated 2 May 2018, was refused by notice dated 18 June 2018.
 - 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 described as '*Erect single storey extension to the rear. Carry out alterations to the roof including a gable to the rear and dormers to each side*'.
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Summary of Decision

1. The appeal is allowed insofar as it relates to the single storey extension, and a lawful development certificate (LDC) is issued in the terms set out below in the Formal Decision. The appeal is dismissed insofar as it relates to the proposed alterations to the roof, involving the creation of a gable end and dormers.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 2 May 2018. 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 application which, hereafter, I shall refer to as "the GPDO".
3. 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 is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and is on the balance of probabilities.

Main Issue

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

Reasons

5. The Council considers that the two separate elements of the proposed development fail to comply with the GPDO's provisos. The indication is that the single-storey rear extension would conflict on various points whilst the roof alterations would fail on one point. I will deal with each element in turn.

Proposed roof works

6. The Council disputes the appellant's additional volume measurements that would result from the proposed roof extensions and alterations. However, there is a more fundamental issue that arises in this instance.
7. Article 3, Schedule 2, Part 1, Class B of the GPDO grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. In particular, under paragraph B.1(c) development is not permitted if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
8. The principal elevation of a dwellinghouse is not defined in the GPDO but is addressed in the government's 'Permitted development rights for householders', Technical Guidance' (September 2019), which states:
9. *'Principal elevation - 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.'*
10. The Technical Guidance goes on to state 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.
11. In this case, although the property's postal address refers to Tattersall Gardens, it is readily apparent that both this and No 91, on the opposite side of Western Road, do not 'front' the former. There is a marked difference in the appearance of the elevations of these two corner dwellings facing Tattersall Gardens and those up and down the street whose frontages thereto are obvious.
12. In contrast, the appeal dwelling's elevation to Western Road, due to its significantly greater width, the presence of the front entrance door and its appearance in general, in common with No 91, is by far the more imposing threshold. Indeed, when walking along the footway and turning into Western Road there is a definite impression that both these dwellings' relatively narrow façades facing Tattersall Road do not have the appearance or character of a principal elevation. Accordingly, I find that both dwellings sit side-on to Tattersall Gardens.
13. In my assessment that the dwelling's north elevation towards Western Road constitutes its principal elevation it follows that the proposed roof extension within the overlying, roof slope facing this road cannot satisfy paragraph B.1(c) which, in this instance, constitutes the relevant proviso. In the circumstances the additional volume created by way of the proposed works to the roof need not be explored further in this appeal.

Proposed single storey extension

14. In view of my findings as to the appeal dwelling's principal elevation facing Western Road the proposed single storey extension would effectively represent a
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extension onto the side of the dwelling. As such, the Council's assessment involves reference to provisos relating to rear extensions which are not applicable in this instance.

15. Proviso (j) explains that extensions are not permitted where the enlarged part of the dwelling would extend beyond a wall forming a side elevation of the original dwellinghouse, would exceed 4m in height, and would have a width greater than half the width of the original dwellinghouse. Proviso (ja) indicates that any total enlargement, being the enlarged part together with any existing enlargement of the original dwellinghouse to which it would be joined, would not be permitted development if it exceeds certain limits, including proviso (i) which requires that the enlarged part of the dwellinghouse would be within 2m of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3m.
16. In this particular instance the newly proposed extension would be 3m in height and would lie within 2m of the property's boundary with Western Road. However, it would adjoin the said projection which, with its flat roof, serving as an external balcony to the dwelling's first floor, is significantly in excess of 3m in height. As such, the planning status of the projection which the Council considers is not an original feature is crucial to this case. If it does not represent an original feature to the dwelling then the actual height of the enlarged part of the dwelling would be the measurement to the highest point of the enlarged part. In this instance that would be the existing balcony level, and it would not, therefore, comply with proviso (i).
17. However, I disagree with the Council's assessment. A close inspection of the dwelling's brickwork shows that there is no joint or transition to the projection. It is seamless, and a similar feature exists at the neighbouring dwelling, No 95. The appellant has also supplied a plan dating from 1936, submitted to and approved by the Council's Borough Engineer and Surveyor's Dept which shows the projection. On the balance of probabilities this is an original built feature. In any event the GPDO confirms that 'original' means in relation to a building as existed on 1 July 1948.
18. The external wall of the 'projection', therefore, represents the limit of the dwellinghouse and, for the purposes of this appeal, it can be discounted from the calculations relating to the proposed single storey extension. The proposed extension would not, therefore, exceed either 3m in height nor 4m in depth. Accordingly, it falls within the parameters of Class A, and this particular element of the proposal constitutes permitted development.

Conclusion

19. On the balance of probabilities the development would fail to comply with paragraph B.1(c) and express planning permission would be required for the roof extensions and alterations, as proposed. Given my findings, although the Council considered that this element failed to satisfy a different proviso, its refusal to grant a LDC for the roof works was nonetheless well founded, and the appeal should not succeed in relation to this element of the development.
 20. However, the Council's refusal to grant a certificate of lawful development in respect of the single storey extension was not well-founded and the appeal in this respect should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.
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Formal Decision

21. The appeal is allowed in part and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/D1590/X/18/3218947

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 May 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations described in the first schedule would be permitted development within the terms of Article 3 and Class A within Part 1 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Timothy C King

INSPECTOR

Date: 14 April 2020

First Schedule

Erection of single storey extension as shown on drawing nos 2841 10 and 2841 11 (submitted with application ref. 18/00817/CLP), dated 2 May 2018.

Second Schedule

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NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
 2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
 3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
 4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.
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Plan

This is the plan attached to the Lawful Development Certificate dated: 14 April 2020

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale



LOCATION PLAN