



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2020

Appeal Ref: APP/Z0116/X/19/3241739

123 Lake Road, Southmead, Bristol BS10 5JG

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Hayley Hemming against the decision of Bristol City Council.
 - The application Ref 19/04629/CP is dated 22 October 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 a hip to gable and rear loft conversion, new porch to front elevation and internal alterations.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Due to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance a site visit could not take place.
3. Following review of the case it appeared that the appeal could be determined without a site visit without causing prejudice to any party. This is because the case turns on legal points. Both the appellant and the Council were contacted, and it was agreed that as the appointed Inspector I could proceed on this basis. The appellant submitted additional photographs of the appeal site which I have taken into account. The Council were given the opportunity to comments on these photographs and chose not to do so.
4. Where an application is made under s192 of the Act it is for the applicant alone to describe what it is they wish to do. The development for which the LDC is sought was described on the application form as set out in the summary details above. The appellant has then described the development on the appeal form as a '2 storey rear extension with eaves to match existing; extends 300cm from the base of the original rear wall and has an overall depth of 510cm.' That description accords with the submitted plans and is therefore the basis on which I have considered this appeal.

Main Issue

5. The appeal is against the non-determination of the application for an LDC within the prescribed period. The Council contend that had it determined the

LDC application it would have found the proposed development not lawful. The main issue therefore is whether the Council's deemed refusal to grant an LDC was well-founded.

Reasons

6. The appeal property comprises a semi-detached house. The proposed development involves the construction of a new porch to the front elevation and a two-storey rear extension. Both parties agree that the LDC application was made on the basis that express planning permission for the development was not required since planning permission is granted by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
7. Article 3 grants permission for classes of development described as permitted development in Schedule 2 to the Order. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class A of Part 1 specifically addresses the enlargement, improvement or other alteration of a dwellinghouse. It is the appellant's case that the two-storey rear extension falls within this class, meeting all the specified limitations and conditions, and so is permitted development.
8. The matter in contention is whether the proposed development complies with paragraph A.1(h), which states that development is not permitted by Class A if – the enlarged part of the dwellinghouse would have more than a single storey and –
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or
 - (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse.
9. The property has a single storey rear element which is referred to by the appellant as an 'outrigger'. The proposed extension would extend some 3m from the outrigger, but also include an additional storey atop the original outrigger which would extend some 5.1m from the rear wall of the main part of the house.
10. The Council claims that the outrigger does not form part of the original dwellinghouse but is a subsequent extension, meaning that the proposed addition would extend more than 3m from the rear wall of the original dwellinghouse and not comply with paragraph A.1(h)(i).
11. In LDC cases the burden of proof rests with the appellant and the appropriate test is the balance of probabilities. Having regard to the appellant's submissions including the photographic evidence, it is my view that the existing outrigger is not an extension but forms part of the original dwellinghouse. Thus, the original dwellinghouse has not been previously extended as claimed by the Council – but that is not enough for the appeal to succeed.
12. Government guidance in relation to Class A is contained within the publication 'Permitted development rights for householders – Technical Guidance'¹ (TG). This makes clear that the measurement of the extension beyond the rear wall

¹ Published by the Ministry for Housing, Communities and Local Government, September 2019.

should be made from the base of the rear wall of the original house that the enlargement extends beyond.

13. The appellant states that the entire structure will be built as a whole, and it is right to look at the proposed extension as one discrete operation, rather than in constituent parts. The two-storey extension would be built out from the rear wall of the outrigger at ground floor level and would also be built out from the main rear elevation of the original dwellinghouse at first floor. It would project more than 3 metres from the main rear elevation of the original and so it would not meet the requirements of paragraph A.1(h)(i) of Class A.
14. The Council also, with reference to the TG, make the argument that the proposal would not meet the requirement of paragraph (ja). However, as stated above, the proposed extension is not joining an existing extension of the original house. Therefore, paragraph (ja) is not relevant.
15. The Council considers that the proposed windows in the extension would comply with Class C of the GPDO which permits other alterations to the roof of a dwellinghouse. I agree, that the windows would be permitted development under Class C – but that finding does not assist the appellant since the extension itself would not be permitted.

Conclusion

16. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR