
Appeal Decision

Site visit made on 23 June 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/C1950/19/3242732

41 The Avenue, Welwyn AL6 0PW

- 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 Lisa Maggs against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2019/0864/LAWP, dated 8 April 2019, was refused by notice dated 20 June 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 described as "Single storey Extension to both sides of principle elevation and rear elevation".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. In support of their case, the appellant has referred to legislation in Wales, Scotland and 2008 UK law. However, I am required to determine the case on legislation in England, namely the Town and Country Planning (General Permitted Development) Order 2015 (hereinafter "GPDO").
4. The parties agree that the elevation containing the front porch and front door, not facing towards the highway, is the principal elevation of the property. As such, the location of the principal elevation is common ground between both parties, and I find no reason to disagree.
5. The appellant states that the proposed rear extension could be reduced to 4m in depth. However, no revised plans have been submitted and I have

considered the appeal on the basis of the plans submitted to and determined by the Council.

Main Issue

6. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed extensions would be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

7. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse. The Council determined that the single storey extension to the rear and sides of the property would fall foul of the limitations and conditions of Class A of Schedule 2, Part 1 of the GPDO for four separate reasons. I shall therefore consider each reason in turn.

Reason 1

8. The Council's first reason for refusal states that the proposed development would fail to satisfy the criteria at Schedule 2, Part 1, Class A.1 (d) of GPDO as there is insufficient information to determine whether the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse as demonstrated on the proposed plans.
9. The Government's Technical Guidance (TG)¹ whilst not determinative provides a useful guide to interpretation of the GPDO. The TG (p.11 and 12) provides guidance on how to measure the height of the eaves for both sloping and flat roofs. This states that *"For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height"*.
10. The diagrams accompanying the above text in the TG clearly show that the height measurement is to be taken to the upper roof surface for both roof types. As such, measurement 115.91 shown on the existing and proposed plans does not reflect the eaves of the property. Notwithstanding this, based on the above guidance within the TG, and from my reading of the plans, the eaves of the proposed extension would not exceed the height of the eaves of the existing dwellinghouse. Therefore, the development would not fail to meet the limitation under Paragraph A.1 (d) of Schedule 2, Part 1, Class A of the GPDO.

Reason 2

11. The Council contends that the single storey extension at the eastern (side) elevation of the property fronts a highway and forms a side elevation of the original dwellinghouse contrary to Class A.1 (e ii). The TG (p.16) advises that

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

the extent to which an elevation of a house fronts a highway will depend on the following factors:

- (i) *the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;*
- (ii) *the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.'*

12. In terms of criteria (i) above, the angle between the side elevation of the house and the highway would be less than 45 degrees, and therefore the side elevation of the house fronts the highway.
13. With regards to criteria (ii) both parties refer to the distance of the property from the private road. The appellant states in her grounds of appeal that the property is setback 40m from the private road, whereas in a later statement claims that it is 50m away. The Council also state that the distance is 40m from the road as originally claimed by the appellant. Regardless of the distance it is clear that the side elevation of the property, facing towards the road has a direct relationship with the private road. Furthermore, the land between the dwelling and the private road falls within the same ownership and curtilage of the appeal property. In my opinion based on the above considerations, the proposed side extension, facing towards the road, would extend beyond a wall which fronts a highway, and forms a side elevation of the original dwellinghouse. Therefore, there would be a failure to meet the limitation at paragraph Class A.1 (e) (ii) of Schedule 2, Part 1, Class A of the GPDO.

Reason 3

14. Under this reason, the Council determined that as the proposed ground floor rear extension would have a depth of 6.5 metres it would fall foul of the limitation within Class A at paragraph A.1 (f) (i) of the GPDO. The relevant restriction there is that a single-storey extension should not extend beyond the rear wall of an original detached dwellinghouse by more than 4 metres.
15. The appeal site is a detached bungalow. A single-storey rear extension exceeding 4 metres in depth as proposed could be considered here under paragraph A.1 (g) of the GPDO but this is subject to the prior approval procedure set out in the condition at paragraph A.4. The requirement to seek prior approval is imposed as a pre-commencement condition. There is no provision for a retrospective grant of prior approval. A certificate cannot be granted for the proposed development under section 192 of the 1990 Act as amended if the prior approval condition has not been complied with by the date of the application. From the evidence before me, the appeal property did not have formal prior approval for such a larger home extension and therefore, it cannot benefit from A.1. (g) of the GPDO. As such, there would be a failure to meet the limitation at paragraph A.1 (f) (i) of Schedule 2, Part 1, Class A of the GPDO.
16. The Council also determined that the extension falls foul of the limitation at Part A.1 (j). The relevant restriction there is that the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and: -

- (i) exceed 4 metres in height,
 - (ii) have more than one storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse.
17. The Council have not provided any further explanation to why they consider the proposed extension would fail to meet this limitation, and from my reading of the plans, the proposed development would not fail to meet the above criteria. As such, the development would not fail to meet the limitation under Paragraph A.1 (j) of Schedule 2, Part 1, Class A of the GPDO.

Reason 4

18. The final reason for refusal relates to condition A.3 of Schedule 2, Part 1, Class A of the GPDO which states that Development is permitted by Class A provided that - (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
19. The Council states that insufficient details were submitted to confirm that the materials used in any exterior work would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The dispute concerning materials relates solely to the proposed window frames of the extensions, in so far as the application did not include any details regarding the colour of the proposed window frames.
20. The TG (p.31) advises that *"the condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials"*. With regard to window frames, the TG further advises that *"what is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames."*
21. In relation to this, the appellant states although not formally noted on the drawings, they do present a similar visual appearance to those in the existing house. However, neither the proposed drawings nor the statement above provides sufficient details of the proposed window materials or their colour. The Planning Practice Guidance (PPG)² makes clear that an applicant is responsible for providing sufficient information to support an application. It states that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved.
22. As such, the Council was correct to say that insufficient information was submitted to determine whether the windows in the extension would be of a similar appearance to those used in the existing dwellinghouse, and it would be premature to grant a certificate of lawful use or development in the absence of this information. Therefore, the proposal fails to comply with condition A3(a) of Schedule 2, Part 1, Class A of the GPDO.

² Paragraph: 006 Reference ID: 17c-006-20140306, Revision date: 06 03 2014

Conclusion

23. The development is not one that complies with all of the limitations and conditions of Article 3, Schedule 2, Part 1, Class A respectively of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey extension to both sides of the principle elevation and the rear elevation 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.

R Satheesan

INSPECTOR