



Appeal Decision

Site visit made on 29 July 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal Ref: APP/Z4718/X/20/3252259

Wood Lea, Stretch Gate, Shelley, Huddersfield HD8 8ES

- 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 Mr S Dyson against Kirklees Metropolitan Borough Council.
 - The application Ref 2020/90842 is dated 13 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 erection of single storey detached building.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal was submitted against the failure of the Council to determine an application for a Certificate of Lawful Use or Development (LDC) within the prescribed period. Where a local planning authority fail to determine an application it is, in effect, a deemed refusal. Once an appeal has been submitted, the jurisdiction for determining the matter falls to the Planning Inspectorate. However, it is common for a Council to set out its case based on how it would have determined the application had it been in a position to do so. In this case, the Council has indicated that it would have refused to grant a LDC.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal. The main issue is whether the Council's deemed refusal to grant a LDC would have been well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful on the date of the application, namely the 13 September 2019.

Reasons

4. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO), subject to the limitations at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed building complies with the limitations at Classes E.1, E.2 and E.3 and I see no reason to take a different view.
5. The area of dispute is whether the proposed building would lie within the curtilage of a dwellinghouse. Based on the information held by the Local Planning Authority, the Council consider that the application property does not operate as a dwellinghouse as defined by the GPDO but comprises two flats.
6. For the purposes of Schedule 2, Part 1, the GPDO in article 2 states that a "*dwellinghouse*" does not include a building containing one or more flats, or flat contained within such a building. Furthermore in relation to a "*flat*", it states that except in the expression "*flat roof*", means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally.
7. The appellant has advised that the dwellinghouse is one house and not a ground and first floor flat as suggested by the appellant. No further evidence has been provided to support the appeal although the appellant invited a site inspection at any time.
8. The Council advise that according to their mapping system, extracts of which are provided in their Statement of Case, the application property is registered as two flats. In addition, an application for planning permission in 1985 stated that the property was a dwelling and flat.
9. Wood Lea is a substantial detached residence situated in large grounds. At the time of my visit the electric gates to the driveway had two entrance bells displaying the names of its occupiers. One bell was for the appellant, Mr S Dyson, the other for Mr D Dyson, who I understand is the appellant's father.
10. At my site visit I was able to enter the property through the main front door which provided access to a central hallway and the whole of the ground floor. There were two main staircases providing access to the first floor, one at either end of the hallway. However, the first floor is divided into two halves, with each half being accessed by a separate staircase. One half of the first floor, has bedrooms and a bathroom and from its landing there was a spiral staircase to the second floor. At the time of my visit the spiral staircase was boarded up at ceiling level to prevent its use. The accommodation within the other half of the first floor was accessed by the second main staircase at the other end of the ground floor hallway. This staircase provided access to the first and second floor where there were bedrooms, a bathroom and a small kitchen. At the time of my visit building works were being carried out in this part of the property. In addition, there was a third staircase providing separate access to this part of the building which I was told led to a back door.

11. In addition, at ground floor level, and with access only from the garden area which surrounds Wood Lea, there was an annex which I was told was formerly a billiard room. This annex was laid out as a self-contained dwelling. It had a utility space, kitchen/living area and there were bedrooms and a bathroom within its roof space above. The proposed single storey building would be sited within the part of the garden adjacent to this annex.
12. Taking into account the evidence before me, including the two entrance bells, planning history and layout of the property as described above, which indicated that there was a self-contained dwelling within an adjoining annex and within the first/second floor of Wood Lea, the balance of probability is that Wood Lea does not operate as a single dwellinghouse. The appellant has not provided any evidence to support their appeal and I saw nothing on my site visit that was sufficiently precise and unambiguous to conclude that on the balance of probability the proposed single storey detached building would be sited within the curtilage of a dwellinghouse as defined by the GPDO.
13. The single storey detached building would not therefore be permitted development within Class E, Part 1, Schedule 2 of the GPDO.

Conclusion

14. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a single storey detached building would have been well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 193(3) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR