



Appeal Decision

Site visit made on 2 September 2020

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/C1950/X/20/3245554

Just House, Coopers Lane, Northaw, Potters Bar EN6 4NJ

- 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 Steve Georgiou against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2019/2228/LAWP, dated 6 September 2019, was refused by notice dated 5 November 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 construction of outbuilding to house a swimming pool at the bottom of the garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
3. The appellant has criticised the way in which the Council has dealt with the application and previous applications which he has submitted. This is also not a relevant consideration in my determination of the appeal.

Main Issue

4. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

5. The application sought to establish that it would be lawful to construct an outbuilding without any further consent. The Council refused the application on the basis that the outbuilding would exceed the limitations of Schedule 2, Part 1, Class E of the Town and Country General Permitted Development

- (England) Order 2015 (as amended) (Class E) by reason of its height and position.
6. Class E sets out that the provision within the curtilage of a dwellinghouse of a building of the type proposed is not permitted development where the height of the eaves of the building would exceed 2.5 metres or where any part of it would be situated on land forward of a wall forming the principal elevation of the original dwelling.
 7. The plans show the new building having a sinuous roof and a 2.5m level is marked on them. However, for the purposes of measuring eaves height any roof overhang is excluded. As a result, the eaves height is shown as exceeding 2.5m and on this basis the development is not permitted development under Class E.
 8. With regard to the relationship between the proposed building and the principal elevation of the dwelling, the circumstances of the case are not as straightforward. The elevation of Just House where it fronts the highway contains doors and windows but the entrance to the dwelling is on the elevation which runs roughly perpendicular to the road. The layout of the house shown on the plans which form part of the Council's submissions shows the entrance hall served by this doorway.
 9. The view of the appellant is that the elevation of the house which fronts the road is the principal elevation and refers to the advice provided in the MHCLG Permitted development rights for householders – Technical Guidance (the Technical Guidance). This document describes the 'principal elevation' as in most cases that part of the house which fronts the highway and states that it will usually contain the main architectural features such as a porch serving the main entrance to the house.
 10. In this case the appearance of Just House and its internal arrangement show that the principal elevation does not front the highway but is that which contains the main entrance and porch. Class E refers to the principal elevation of the original dwellinghouse. It is conceivable that the internal layout of the house has changed since it was first constructed such that the elevation facing the road originally contained a porch and/or entrance door. However, there is no evidence before me to demonstrate this and the onus lies with the appellant to provide such facts.
 11. The proposed building would be in front of a hypothetical line drawn through the principal elevation to the boundary and development would not be permitted under Class E in this location.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding 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.

Sarah Dyer

Inspector