



Appeal Decision

Site visit made on 26 August 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/J3720/X/20/3250919

15 Hawtin End, Harbury, Leamington Spa CV33 9PT

- 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.
 - The appeal is made by Mrs Kate Holliday against the decision of Stratford on Avon District Council.
 - The application Ref 20/00509/LDP, dated 22 January 2020, was refused by notice dated 14 April 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is a single storey rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed operations which are considered to be lawful.

Preliminary Matters

2. Section 192(2) of the 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.
3. For the avoidance of doubt, in an appeal under s195 of the 1990 Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC for a single storey rear extension was well-founded. The decision turns on whether the proposal is permitted development (PD) under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. The Council determined that the proposed development would not have been lawful, at the time of the application, because the extension would extend beyond a wall which forms the principal elevation of the original house. The proposal was therefore not considered to fall within the PD limits as set out in Schedule 2 Part 1 Class A1 (e)(i) of the GPDO. There appears to be no disagreement that the extension complies with all the other limitations and conditions of Class A and with the information before me, I concur.
6. The appeal property is a detached dwelling situated within a new housing development. It is approached via a private driveway. The appeal rests on the Council's view that the principal elevation is the south-west (SW) elevation, rather than the south-east (SE) elevation. The determining factor for the Council being that this elevation reveals the main architectural features of the dwelling, such as the main entrance to the house, two garage doors and three upper floor windows (two of which are partial dormer windows).
7. Furthermore, the Council point to the SW elevation displaying the widest frontage which has a greater prominence and is the first elevation seen, in full, when approaching the property from the private driveway. It is also noted that the appeal property along with its immediate neighbours have frontages which face towards open countryside to the SW.
8. The appellant disagrees with the council's assessment that the SW elevation is the prominent elevation, but rather describes this as an "additive transformation of the main house to form the 'L' shape" pointing to the subservient features such as lower eaves and ridge height, render finish and hipped roof.
9. The appellant argues that the principal elevation is SE facing, relying on guidance produced by the Department for Communities and Local Government *Permitted development for householders, Technical guidance* September 2019 (Technical Guidance). This defines, at page 7, the term "Principal elevation" to be, in most cases, *"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 continues with the definition saying *"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"*. The Technical Guidance is not a statement of law. However, it sets out how the Government intends PD provisions should be applied. Its guidance should, therefore, be followed unless the Courts give a different interpretation.
11. The principal elevation in the case of an 'L' shaped property is a matter of judgement. Bearing in mind the Technical Guidance and the evidence before me, it falls to me to take a view as to which of these facades form the principal elevation. To my mind, the principal elevation is the SW elevation. This

elevation contains the main architectural features which are associated with a principal, or 'most-important', elevation. This contrasts with the SE façade which displays a simple unembellished elevation with a window at both ground and first floor and little else. The SW elevation is the prominent elevation when approaching the property by occupiers and visitors to the property using the internal roadways by vehicle or on foot. In contrast, the SE elevation is viewed in full once within the drive and at a distance from the nearest PROW. Although this is an outward facing elevation towards the countryside, it lacks the fundamental features which define the main façade of a dwellinghouse.

12. However, the appeal property has an 'L' shaped footprint, with two SW facing elevations. Consequently, in these circumstances, both SW facing walls form part of *the* principal elevation. As illustrated on pages 14 and 15 of the Technical Guidance for clarification in the context of A.1(e), any extension forward of or breaching the 'dotted' line will not be permitted development and will require an application for planning permission. In this instance, the proposed extension would not breach the 'dotted' line beyond the principal elevation. The proposal would fall within the limits of PD as set out in Schedule 2 Part 1 Class A1(e)(i) of the GPDO and therefore the appeal can succeed in respect of the proposed operations.

Conclusion

13. For the reasons set out above, I conclude that the Council's refusal to grant an LDC in respect of the single storey rear extension was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the Act.

S Hanson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 22 January 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence shows that, on the balance of probability, the proposed operations described in the First Schedule and shown on the drawing titled: Proposed Plans & Elevations Dwg no. 1908-12 PL-3 Rev A dated 29.11.19; Site Location Plan Dwg No. 1908-12 PL-1 Rev A dated 29.11.19 would be within the terms of Article 3 and Schedule 2, Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S Hanson

INSPECTOR

Date: 28 September 2020
Reference: APP/J3720/X/20/3250919

First Schedule

Single storey rear extension

Second Schedule

15 Hawtin End, Harbury, Leamington Spa, CV33 9PT

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

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, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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 are materially different from those described, or which relate to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 September 2020

by S Hanson BA(Hons) BTP MRTPI

Land at: 15 Hawtin End, Harbury, Leamington Spa, CV33 9PT

Reference: APP/J3720/X/20/3250919

Scale: Not to scale

