



Appeal Decision

Site visit made on 1 September 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/R0660/X/20/3251540

Orchard Cottage, Back Lane, Plumley, Knutsford WA16 9SF

- 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 Jacqueline O'Shea against the decision of Cheshire East Council.
 - The application Ref 19/5887M, dated 18 December 2019, was refused by a notice dated 11 February 2020.
 - 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 two storey rear extension extending 3m from the rear wall of the original dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) states 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 and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

3. The proposed development is for a double gable two storey extension to the rear elevation of this detached residential property. The enlargement, improvement or other alteration of a dwellinghouse is permitted by Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to exceptions set out in A.1 and A.2 and conditions at A.3 and A.4.
4. The Council considered that the proposed development falls outside of the parameters of Class A, Part 1, Schedule 2 of Article 3 of the GPDO. Furthermore, they do not consider that the site benefits from permitted

- development rights as they were rescinded by a condition attached to a previous planning permission which has been implemented.
5. Planning permission was granted for a lounge, bedroom and carport extension in 1989 at the appeal property subject to a condition (Condition No.4) which states the following: *"The development hereby permitted shall be carried out in accordance with the conditions herein contained save as aforesaid no development (as detailed in Section 22(1) of the Town and Country Planning Act 1971) shall at any time hereafter be undertaken in, on, over or under the said curtilage of the dwelling without the express consent of the Local Planning Authority notwithstanding that any such development might otherwise have been permitted by virtue of the Town and Country Planning General Development Order 1977 and subsequent amendments thereto."*
 6. In order to benefit from any planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, even though condition No 4 relates to the Town and Country Planning General Development Order 1977 due to Section 17(2) of the Interpretation Act 1978 the condition has a continuing effect in respect of the GPDO.
 7. Whilst I appreciate that the Council have previously taken a different view and that this may have given rise to confusion, those previous decisions are not a matter for my consideration in this appeal. For the reasons given above and with no evidence to indicate that condition No 4 has been removed or varied, I am content that this condition continues to have effect.
 8. Consequently, condition No 4 restricts development within the curtilage of Orchard Cottage and as such the two storey rear extension is development for which express planning permission is required, and that could only be granted on application to the local planning authority in the first instance.

Conclusion

9. For the reasons given above, I conclude that the Council's decision to refuse to grant a certificate of lawful use or development in respect of a two storey rear extension extending 3m from the rear wall of the original dwelling was well founded and 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