
Appeal Decision

Site visit made on 15 September 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 October 2020

Appeal Ref: APP/Y0435/X/20/3254723

1 Stanway Close, Downhead Park, Milton Keynes MK15 9BU

- 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 and Mrs Navine and Rashmita Shah against the decision of Milton Keynes Council.
 - The application Ref 20/00513/CLUP, dated 25 February 2020, was refused by notice dated 22 April 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is a single storey rear extension and new flat top, hipped roof over the existing garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the development in the banner heading above from section 4 of the application form that accompanied the LDC application. I have retained only the wording that described the act of development from that section of the form.
3. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

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

Reasons

5. The appeal property is a large detached dwelling fronting onto Stanway Close. There are several dwellings of similar design that also front that road. The proposal is to construct a single storey rear extension and a new hipped roof over the existing garage. The proposed roof would also extend over the proposed single storey extension.
6. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning

- permission for development within the curtilage of a dwellinghouse. Class A of Part 1 of the GPDO allows for the enlargement, improvement or other alteration of a dwellinghouse (Class A).
7. The appellants seek to establish that the development would be granted permission by virtue of Class A. There is no dispute between the parties that the development falls to be considered under Class A. Nor is there any dispute that the development would adhere to the limitations under Class A set out at paragraph A.1 (a), (b), (c), (d), (e), (h), (i) and (k). I have no reason to disagree with these findings.
 8. The limitation set at paragraph A.1 (j) is that the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would (i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse. The appellants consider that the garage is part of the original dwellinghouse, and the proposed development does not extend beyond the wall that forms its side elevation. As such, they do not consider that the limitation set out at paragraph A.1 (j) (iii) is applicable to the proposed development. Moreover, the appellants have referred to an appeal decision¹ in support of their position that a garage can be treated as part of the original dwellinghouse.
 9. Nevertheless, the limitation at paragraph A.1 (j) refers to the enlarged part of the dwellinghouse extending beyond **a wall forming a side elevation** of the original dwellinghouse (my emphasis). The Ministry of Housing, Communities and Local Government's publication '*Permitted Development Rights for Householders*' Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to the interpretation of the GPDO. On page 22 of the TG it states that '*a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls.*'
 10. The garage appears to be part of the original dwellinghouse. However, in this case, the enlarged part of the dwellinghouse would extend past a side elevation of the 2-storey part of the original dwellinghouse. This finding appears to be consistent with the appeal decision cited by the appellants. In any case, I am required to determine the appeal based on its individual circumstances.
 11. Taking into account the above, the limitation at paragraph A.1 (j) (iii) of the GPDO is applicable to the proposed development. The development would have a width greater than half the width of the original dwellinghouse as it would extend across the whole of the rear elevation including to the rear of the garage. Consequently, the single storey rear extension and new flat top, hipped roof over the existing garage would not be permitted by Schedule 2 Part 1 Class A.1 (j) (iii) of the GPDO.

Other matters

12. I note that the appellants consider that the Council should have treated the LDC application as providing the information required in relation to paragraph A.4 of Schedule 2 Part 1 of the GPDO. However, the proposed development does not meet the limitations of Schedule 2 Part 1 Class A.1 (j) (iii) of the

¹ Ref No: APP/Q1445/X/16/3165939

GPDO. Therefore, this matter would not alter whether the Council's decision to refuse the grant of an LDC was well-founded.

13. I note the appellants' concern regarding difficulties communicating with the Council. However, that is not a matter for my consideration in the context of this appeal decision.

Conclusion

14. Accordingly, for the reasons given above, I conclude that the Council's refusal to grant an LDC 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.

D. Boffin

INSPECTOR