



Appeal Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/T3725/X/20/3251887

129 Warwick New Road, Leamington Spa, Warwickshire CV32 6AB

- 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 George Scott against the decision of Warwick District Council.
 - The application Ref W/19/1442, dated 22 August 2019, was refused by notice dated 4 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 an LDC is sought is a single storey extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Inspectorate initially arranged for this appeal to be determined following a site visit. The file was subsequently reviewed to consider the optimal procedure for the appeal. To enable appeals to progress, it was considered that the appeal could be determined without a site visit without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted plans, photographs and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute. Both parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No objections were received.
3. The development proposed has previously been subject to a "prior approval" submission and the Council confirmed that prior approval was not required. Not all the documents are before me and, furthermore, it is not for me to consider whether that submission was considered properly or not. It is for me to determine whether the decision which is the subject of the appeal was well founded.
4. Section 192(2) of the Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the *proposed* use or operations described in the application would be lawful, if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case it shall refuse the application.
5. In an appeal under s195 of the 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 the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities.

Main Issue

6. This is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

7. The reason for the Council's refusal is because the extension contravenes limitations (f), (j) and (ja) of Schedule 2, Part 1, Class A of the GPDO. This is because, combined with the previous enlargement of the property, the proposed extension would have more than a single storey and would extend more than 3 metres beyond the rear wall of the original dwellinghouse. The proposal would also extend beyond a wall forming a side elevation of the original dwellinghouse.
8. Limitation (ja) of Class A directs that limitations (e) to (j) must be considered cumulatively with "any existing enlargement of the original dwellinghouse to which it will be joined". The key considerations are whether the proposed extension would be attached to the rear wall of the original dwellinghouse, or if it would adjoin an "existing enlargement" and, if so, whether the combined total enlargement would contravene the other limitations. Thus, the identification of the original rear wall is a main consideration in the assessment of whether these limitations are contravened.
9. The Council's case rests on the fact that the proposed extension adjoins a previous single storey rear and two storey side extension granted planning permission in 1999¹. The "total enlargement" for the purpose of limitation (ja) is the extension now proposed, combined with the single storey rear and two storey side extension previously constructed. The photographs provided by the appellant clearly show that the proposal has been erected although the building work has not been completed.
10. The appellant argues that the proposed single storey rear kitchen extension would not join the previously enlarged section of the original house. Instead, the proposal would join the rear wall of the original dwellinghouse which incorporated the outhouse that was attached to the side of the dwelling. Within the appellant's statement, 3-dimensional representations helpfully show: the house in its original form; the house incorporating the extension approved in 1999; and how it would appear following the construction of the proposed single storey extension to the rear. However, the proposed plans² for the LDC show a roof form which differs from the 3-dimensional representations and from that which has been constructed. Both the 3-dimensional illustrations and the photographs, provided by the appellant, show a structure with a simple dual pitch roof.
11. The plans, which are integral to the application for the LDC, propose a part mono-pitch and part dual pitch roof joining the rear elevation of the

¹ Planning application reference W99/0672

² W_19_1442 – 129-2019-012 – Proposed Floorplan, W_19_1442 – 129-2019-013 – Proposed Rear Elevation, W_19_1442 – 129-2019-014 – Proposed Side Elevation

dwellinghouse. Both the elevation and floor plans show how the proposed single storey rear extension would join the rear wall of the original dwellinghouse and also the previous enlargement. I have not been provided with plans for the original house and consequently my judgement is based on plans for both the 1999 proposal, the appeal proposal and the photographs. Based on the evidence before me, I consider that the height of the roof would extend beyond the height of the previous outhouse, thereby connecting with the rear elevation on the previous enlargement. However, what has been constructed does not comply with the submitted plans for the LDC. Even if I were to consider the appeal under s191³ for what has been built, with the agreement of the parties, the plans show a different form of development.

12. A.1(ja) makes it clear that development is not permitted if “*any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j)*”. Thus, the proposed enlargement must be considered as part of the previous enlargement to the side and rear of the original dwelling.
13. Consequently, based on the submitted plans for the LDC, the appeal proposal would contravene limitation (h) because the “total enlargement” would have more than a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres. It would also contravene limitation (j) because the “total enlargement” would extend beyond a wall forming a side elevation of the original dwellinghouse and would exceed 4 metres in height and have more than a single storey.
14. Correspondence between the Council and the appellant⁴ states that incorrect reference to limitation (f) was made in the Council’s decision notice and that the refusal should have referred to whether the extension complies with limitations (h), (j) and (ja) of the GPDO. I have taken account of this and concur that the proposal would not be caught by limitation (f).

Conclusion

15. For the reasons given above, I conclude that the Council’s refusal to grant an LDC in respect of a single storey extension 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.

S Hanson

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³ Certificate of lawfulness of existing use or development

⁴ Appellant’s statement appendix 5