



Appeal Decision

Site visit made on 6 October 2020

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 29 October 2020

Appeal Ref: APP/V3120/X/20/3252562

Fieldside House, London Road, Blewbury, Didcot, OX11 9NY

- 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 Ms Annie Lee against the decision of Vale of White Horse District Council.
 - The application Ref P20/V0211/LDP, dated 22 January 2020, was refused by notice dated 11 March 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 single storey extension (under existing roof canopy) and alterations to existing kitchen to private residential house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made under s192(1) of the Town and Country Planning Act 1990 (the Act) and sought to establish whether operations proposed to be carried out would be lawful.
3. I saw at my site visit that the single storey extension, which is the subject of the LDC application, has been built following a grant of planning permission¹ on 30 April 2020. I am still able to consider the LDC application under s192(1) because the determination is to be made as to whether the development would have been lawful at the time of the application, which is several months earlier on 22 January 2020.

Main Issue

4. The main issue is whether the single storey extension (under existing roof canopy) and alterations to existing kitchen to private residential house would have been lawful on the date of the LDC application on the basis that the development would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as then in force.

¹ Planning application Ref: P20/V0542/HH

Reasons

5. The appeal relates to a two storey dwellinghouse located within Blewbury Conservation Area and North Wessex Downs Area of Outstanding Natural Beauty (AONB).
6. Article 3 and Schedule 2, Part 1, Class A of the GPDO grant planning permission for the enlargement, improvement or other alteration of a dwellinghouse. This 'permitted development right' is subject to limitations and conditions.
7. Paragraph A.2 of the GPDO sets out the limitations in respect of Article 2(3) land, which includes AONB's and conservations areas. Paragraph A.2(a) states that development is not permitted under Class A if *'it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles'*.
8. The appellant submits that the restriction is intended to apply to any cladding of the existing dwellinghouse and not a permitted extension because taking the Council's view would mean that no extension of a dwellinghouse on Article 2(3) land would fall within permitted development rights and that this clearly is not the intention or the spirit of the GDPO.
9. However, paragraph A.2(a) clearly states otherwise. Clarification is also provided by the Government's Technical Guidance², which states that that *'the cladding of any part of a house, whether it be the original house or any enlarged part is not permitted development and requires an application for planning permission'*. As specific Government advice on how the GPDO should be interpreted, the Technical Guidance attracts significant weight.
10. Therefore, whilst paragraph A.2(a) limits the range of dwellings which would benefit from the permitted development right, it does not preclude all extensions on Article 2(3) land as suggested.
11. In this case, as the dwellinghouse is already clad in render and the extension is proposed to be rendered in order to comply with the matching materials condition under paragraph A.3(a), the extension would not be permitted development because it would conflict with the limitation of paragraph A.2(a). This is not a 'Catch 22' situation or a case of one limitation or condition overriding another; both must be met. Whether or not this is reasonable, is not a matter for this appeal.
12. The Council has also referred to a number of appeal decisions³ which I agree support the above findings. I have noted the appellant's comments that they are not directly comparable in scale and character, as well as her other comments relating to the visual impact of the proposal. However, planning merits form no part of the assessment of an application for a LDC, which must be considered in the light of the facts and the law.
13. Paragraph A.2(b) sets out a further limitation in that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. The

² Ministry of Housing, Communities & Local Government – Permitted development rights for householders – Technical Guidance – September 2019

³ Appeal References: APP/F0114/X/16/3166173; APP/G2245/X/14/2221631; APP/J0405/X/11/2143827; and APP/E5330/X/10/2140581

Technical Guidance explains 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 and that houses will often have more than two side elevation walls. The illustration contained in the Guidance⁴ also shows that the interpretation of a side elevation should not be restricted to just the main side wall(s) of a dwelling.

14. I've noted the plan provided by the appellant which seeks to identify all front, side and rear walls of the property. However, the proposal would extend the dwelling from the side wall of the scullery. I appreciate that in doing so it would not extend beyond the depth of the scullery or the footprint of the adjacent canopy roof, but the extent of the latter cannot be the rear elevation of the dwellinghouse because it is open.
15. I therefore find that the appellant has not demonstrated that the proposal has been granted planning permission by the GPDO. On the evidence before me and the balance of probabilities, the development would breach the limitations set out in paragraphs A.2(a) and (b) to Part 1, Class A of the GPDO.

Conclusion

16. For the reasons given, I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me under s195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

⁴ Page 22