
Appeal Decision

Site visit made on 20 October 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2020

Appeal Ref: APP/E2734/X/20/3257289

Weston Moor Cottage, Weston Moor Road, Clifton, Otley, North Yorkshire LS21 2NB

- 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 Matthew Tyson against the decision of Harrogate Borough Council.
 - The application Ref 20/01676/CLOPUD, dated 14 May 2020, was refused by notice dated 27 July 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 a detached garage outbuilding.
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Summary Decision: the appeal is dismissed

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to 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. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
2. The appeal property is a detached dwelling located to the south of Weston Moor Road and is within an Area of Outstanding Natural Beauty (AONB). The property is accessed via a shared access track, leading to a parking area immediately adjacent to the north elevation of the building. The main entrance to the dwelling is in the north elevation and is accessed from the parking area.
3. The south elevation of the dwelling overlooks the valley below and contains many of the original architectural features of the building. The property has been altered over the years and, whilst the main entrance is now in the north elevation, it is probable that the original front door was in the south elevation.

4. The provision within the curtilage of a dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse is permitted under Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), subject to the limitations set out in Classes E.1, E.2 and E.3. There is no dispute that the proposed building is within the curtilage of Weston Moor Cottage or that it is required for purposes incidental to the enjoyment of the dwellinghouse. Consequently, having regard to the limitations within Class E, I consider that the main issues are whether:
- any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse (Class E.1(c)), and
 - the total area of ground covered by the building situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres (Class E.2.).
5. I am satisfied that the proposed detached garage outbuilding would accord with Class E in all other respects, including with the limitation at Class E.3.

The principal elevation

6. The proposed detached garage outbuilding would be located on what is currently a grassed area to the north of the existing car parking spaces. It would therefore be closer to Weston Moor Road than the main dwelling. The latter is the main highway serving the house and, as I understand it, from which the postcode is derived.
7. The *Permitted development rights for householders: Technical Guidance* (Technical Guidance) published by the Ministry of Housing, Communities and Local Government in September 2019 indicates that, in most cases, the principal elevation of a dwelling will be that part of the house which fronts the main highway serving the house. The Technical Guidance also indicates that usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. This would tend to suggest that, in this case, it is the north elevation of the dwelling that should be regarded as the principal elevation
8. However, the Technical Guidance goes on to indicate that the principal elevation will usually contain the main architectural features. In this case, the majority of the main architectural features of the original building are concentrated in the south elevation. It is also probable that the front door was originally located in the south elevation such that, for much of its history, the south elevation of the building would have been regarded as the front elevation.
9. The Council accepts that the south elevation of the dwelling is the principal elevation and, for the reasons above, I see no reason to take a different view. It follows that no part of the proposed detached garage outbuilding would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The proposed detached garage outbuilding would therefore be in accordance with the limitation set out in Class E.1.(c).

The distance of the building from 'any' wall of the dwellinghouse

10. The term 'any' in the context of Class E.2. is not defined in the Technical Guidance. In the absence of any definition in the Technical Guidance, it is necessary to consider the intention behind the limitation set out in Class E.2. Insofar as Class E.2. relates to land within in an AONB, the Technical Guidance explains that the effect of this limitation is to restrict the amount of permitted development for buildings located more than 20 metres away from any wall of the house. The diagram at page 45 of the Technical Guidance depicts a shaded area equivalent to 20 metres when measured from the external face of the dwelling. The shaded area extends in all directions from the external face of the dwelling. The diagram makes it clear that, beyond the shaded area, the maximum total area of ground that can be covered by buildings is 10m².
11. Having regard to the above, it appears to me that the intention of Class E.2. is that no part of an outbuilding with an area in excess of 10m² should be within 20 metres of the external face of the main dwelling. It is therefore my view that the word 'any' in Class E.2. should be read as meaning the closest external wall of the main dwelling to the outbuilding proposed.
12. In this case, the proposed detached garage outbuilding has an area in excess of 10m². The application plans show that, at its closest point, the proposed detached garage outbuilding would be 18.89 metres from the main dwelling. Indeed, the juxtaposition between the proposed detached garage outbuilding and the closest point of Weston Moor Cottage – i.e from the corner point of the main dwelling to the closest point of the outbuilding- is identical to that depicted in the diagram at page 45 of the Technical Guidance and which indicates that a minimum distance of 20m is required.
13. It follows that the proposed detached garage outbuilding would be a building with an area in excess of 10m² within 20 metres of the external face of the main dwelling. As such, it would not accord with the limitation set out in Class E.2. and would therefore not constitute development permitted by Class E, Part 1, Schedule 2 of the GPDO.
14. In addition to the Technical Guidance, the appellant also refers to the guidance on the Planning Portal in relation to Class E. On my reading, that guidance re-affirms that in the Technical Guidance and I see no reason to alter my conclusion above in the light of it. The appellant has referred me to two other applications for LDCs submitted to Harrogate Borough Council which, he contends, have been determined in accordance with his interpretation of Class E and therefore differently to this application¹. However, I have not been provided with full details of those applications and, in any event, I have determined this appeal on the particular facts of this case.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed detached garage outbuilding 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.

¹ Horsemans Well Cottage in Felliscliffe and Grass Garth Farm in Askwith.

Formal Decision

16. The appeal is dismissed.

Paul Freer
INSPECTOR