



Appeal Decisions

Site visit made on 19 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal A Ref: APP/P0240/X/20/3248694

Kingsway Cottage, Kingsway, Stanbridge LU7 9HZ

- 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 Peter Sutton of Sutton Properties Ltd against the decision of Central Bedfordshire Council.
- The application Ref CB/19/03560/LDCP, dated 18 October 2019, was refused by notice dated 18 December 2019.
- 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 side and two-storey side extensions.

Summary of Decision: The appeal is dismissed

Appeal B Ref: APP/P0240/D/20/3248699

Kingsway Cottage, Kingsway, Stanbridge LU7 9HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Peter Sutton of Sutton Properties Ltd against the decision of Central Bedfordshire Council.
- The application Ref CB/19/04194/FULL, dated 12 December 2019, was refused by notice dated 12 February 2020.
- The development proposed is side and rear extensions and erection of garage / car port.

Summary of Decision: The appeal is dismissed

Procedural Matters

1. I have taken the description of the proposals from the respective application forms. Any reference to 'side' and 'rear' is reflective of the language used therein and does not indicate an acceptance that these elevations are the side or rear of the property.
2. The appellant has labelled the elevations of the property as 'south elevation', 'west elevation' and so on. The Council has used these terms in their assessment and I shall do so for the ease of identification.

Appeal A: The LDC appeal

3. An application under S192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use

¹ Town and Country Planning Act 1990 (as amended)

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. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

4. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force. The main thrust of the appellant's case is that the proposed development is granted planning permission by virtue of Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).
5. Class A permits the enlargement, improvement or other alteration of a dwellinghouse subject to specified limitations and conditions. The Council refused the application on the basis that the proposal would not comply with Paragraph J (i), (ii) and (iii) of the aforementioned Order because it considers the principal elevation to be the eastern elevation of the dwelling which fronts the road known as Kingsway. Under paragraph (j) development is not permitted if 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.
6. A two-storey extension is proposed to the north elevation of the property and a single storey extension, not exceeding 4m in height, is proposed to the west elevation. Whether the proposed development would comply with the limitations of the GPDO, and therefore be lawful development, will turn on whether the principal elevation of the original dwellinghouse is the south elevation or not.
7. The Permitted development rights for householders: Technical Guidance (2019) defines the 'Principal elevation' in most cases as that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
8. Kingsway Cottage is a modest red brick building of simple design set back from Kingsway and is bound by mature vegetation. The building originally comprised two cottages and has been internally rearranged to form one, larger cottage. Certain features of the original cottages have been retained on the south elevation, including both doors as well as windows which display a degree of symmetry reflective of the property's origins as two cottages. The gable end of Kingsway Cottage faces towards Kingsway and contains the a door to the property with a window above.
9. It is not possible to assess what comprised the original dwellinghouse until it came into being; this part of the GPDO does not use the term 'original building'

but rather requires consideration of the 'original dwellinghouse'. Where a change of use has previously taken place, the original dwellinghouse will be that which resulted from the change and is now the building subject to the appeal.

10. The appellant suggests that the door in the east elevation is a side door, however, its design with side panels and letter box indicate that it is intended as a front door. It also functions as a front door, giving access to a hallway, which in turn allows access to the rest of the dwelling. Although the south elevation contains features which are reflective of a principal elevation, the inclusion of the front door in the east elevation provides access to the hallway meaning that functionally, following its conversion, the front of the house is now the east elevation.
11. Although Kingsway is not a principal road, it is the main highway serving the dwelling and sets the postcode for the property. Whilst there are two access points, the second access point is more substantial and better accommodates vehicles. As a result, visitors to the site are more likely to use the second access, despite having to travel further along Kingsway to reach it. The east elevation of the dwelling also faces the main highway, Kingsway, and is the elevation that visitors to the dwelling will see as they enter the site.
12. I accept that the principal elevation of the two cottages would have been the south elevation and has a greater void-to-solid ratio. However, following its conversion, as a matter of fact and degree, given the way that the house functions and its relationship with the highway, the east elevation became the principal elevation of the dwellinghouse.
13. Since the enlarged parts of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, would exceed 4 metres in height, would be two storey and would have a width greater than half the width of the original dwellinghouse, it would not comply with the limitations set out in Schedule 2 of the GPDO under Class A, A.1. (j)(i), (ii) and (iii) and therefore does not constitute permitted development.

LDC Conclusion

14. Having regard to the above and to all other matters raised I find that it has not been shown, on the balance of probabilities, that the proposed development would be permitted development. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B – the Section 78 appeal

Main issues

15. The appeal site falls within an area of Green Belt. Accordingly, the main issue of the appeal is:
 - Whether the proposal is inappropriate development within the Green Belt for the purposes of the Framework and development plan policy; and
 - The effect of the development on the openness of the Green Belt; and

- The effect of the development on the character and appearance of the area; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether Inappropriate Development in the Green Belt

16. The National Planning Policy Framework (the 'Framework')(2019) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 145. One of the exceptions (c) is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
17. Policy H13 of the South Bedfordshire Local Plan Review (LPR)(2004) states that extensions to dwellings in the Green Belt will only be permitted providing that the proposed extension is modest in scale and does not result in disproportionate cumulative addition over and above the size of the original building, amongst other things. The proposal comprises an extension to the building itself and the construction of a detached garage. The Framework does not make any specific reference to ancillary outbuildings within the curtilage of a dwelling. However, given the close physical and functional relationship that the garage would have with the dwelling, I consider it can be regarded as an extension to the house.
18. The Council suggests that the proposed extensions have a total floor area of almost 142 square metres which represents an approximate 194% increase in the existing floor area. The appellant does not dispute these figures, however, it is pointed out that the development ratio of the plot would be only 15% which is very small. Although the appeal building sits within a spacious plot, the Framework requires consideration of proposal against the building, not the size of the land within which the building sits.
19. Whilst the Framework does not define the term proportionate, the Central Bedfordshire Design Guide (CBDG)(2014) sets out that, as a guiding principle, in order to be considered as proportionate the original building should not be added to by more than 60%. The works proposed to the dwelling would greatly exceed this and would result in a building with a footprint which is more than double that of the existing building, contrary the CBDG. The proposed extension would dominate the original structure and would therefore be a disproportionate addition over and above the size of the original building.
20. The overall size and mass of built development within the appeal site would be significantly greater than currently exists and would result in disproportionate additions over and above the size of the original building. As such, I conclude that the development would be inappropriate development which is, by definition harmful to the Green Belt and contrary to Policy H13 of the LPR and the Framework.

Openness

21. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework sets out the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt has both a visual aspect and spatial aspect.
22. The appeal site is located off Kingsway, which is a semi-rural lane with dwellings largely located on the eastern side of the road. The proposed extensions would occupy land within the site which is currently free of built development. Whilst the site is well screened by mature vegetation, given the extent of the proposed development and the proximity of the garage to the highway, the appeal scheme would be visible from the Green Belt and would result in a modest loss of openness.

Character and appearance

23. Policy BE8 (iii) of the LPR sets out that the size, scale and massing of development should complement and harmonise with the local surroundings. Although there are a number of dwellings on the eastern side of Kingsway, the absence of built development along the western side of the road and the setback of the dwelling helps maintain a semi-rural character.
24. Policy H8 of the LPR states that extensions to dwellings will be permitted if the extension is well related to the existing building in terms of its siting, amongst other things. The proposed garage would be much closer to the highway than the existing dwelling and, due to its height, would be easily viewed from the road. The garage would appear a dominant feature which would appear at odds with the main dwelling and would harm the character and appearance of the area, contrary to Policies BE8 and H8 of the LPR.
25. Due to the setback of Kingsway Cottage from the highway, the use of similar materials and the provision of mature screening the effect of the two-side and rear extension to the dwelling would have limited effect on the character and appearance of the area and in this regard I consider there would be no harm. This is a neutral factor in my consideration of the appeal.

Other considerations

26. Although the proposed development is located within a village and would not lead to a coalescence of the settlements of Stanbridge and Tilsforth, these are not matters which weigh in support of the appeal scheme. There would be some limited economic benefit during the construction stage and as a result of ongoing expenditure once the dwelling is occupied. However, such benefits would be very modest and would carry very limited weight in favour of the development.
27. The proposed extension would result in larger accommodation which would be more suited to a family than the existing dwelling and is within walking distance of a range of services. The appeal site is located within a village which the appeal asserts has limited potential for new housing with no allocations proposed in the emerging Local Plan. The provision of a family sized dwelling in the village would enable future occupants to access facilities in the village

without reliance on a car and may help secure the viability of services and facilities. However, the benefit arising from one the provision of one dwelling would be very modest and therefore carries limited weight.

28. Although there would be some benefit arising from the appeal scheme, these considerations, along with the other matters identified in the evidence either individually or collectively, do not clearly outweigh the identified harm to the Green Belt so as to amount to the very special circumstances necessary to justify the development.

S78 Conclusion

29. Paragraph 143 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. The appeal proposal would be inappropriate development in the terms set out in the Framework and lead to a modest loss of openness to the Green Belt and harm to the character and appearance of the area. These issues are not outweighed by the considerations advanced by the appellant and in the wider evidence so as to amount to very special circumstances. Therefore, for all of the reasons given above I conclude that the S78 appeal should be dismissed.

Formal Decisions

Appeal A: Ref APP/P0240/X/20/3248694

31. The appeal is dismissed and an LDC is not granted.

Appeal B: Ref APP/P0240/D/20/3248699

32. The appeal is dismissed.

M Savage

INSPECTOR