Appeal Decision

Site visit made on 20 October 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 07 December 2020

Appeal Ref: APP/C1570/X/20/3250566
The Sparrows, Cox Hill, Great Easton, Dunmow CM6 2HL

- 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 by Ashley Hughes against the decision of Uttlesford District Council.
- The application ref. UTT/19/2309/CLE, dated 17 September 2019, was refused by notice dated 1 October 2019.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is the construction of a garage and shed building in the rear garden along the rear boundary.

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended - which relates to an application for a lawful development certificate (LDC) - the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Reasons

3. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the garage and shed building should be regarded as development that is required for a purpose incidental to the enjoyment of the dwellinghouse as such and is therefore permitted under the provisions of Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

4. The allowance in Class E is subject to a number of preclusions, including those at paragraph E.1(e) where it is stated that:

   Development is not permitted by Class E if –

   The height of the building would exceed —

(i) 4 metres in the case of a building with a dual-pitched roof,

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or

(iii) 3 metres in any other case.

Furthermore, development is not permitted under Paragraph E.1(f) if the height of the eaves of the building would exceed 2.5 metres.

5. The Council officer's report states that the building does not comply with the limitations in E.1(e) but is not specific as to which part. However, the building does not have a dual-pitched roof, and it stands within 2 metres of the site boundary. It can therefore be inferred that they consider E.1(e)(ii) applies, and the height exceeds 2.5 metres. However, they also consider the building would meet the limitation in E.1(f), which precludes a building where the height of the eaves would exceed 2.5 metres.

6. The government's document 'Permitted Development Rights for Householders – Technical Guidance' of 2017 (the Guidance) advises that the height of a building should be measured from the highest ground level immediately adjacent to the building to its highest point. Furthermore the eaves height of a flat-roofed building should be measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof. In this case the two dimensions are essentially the same. The Council's position is therefore unclear.

7. Looking at the building in general, it stands at the northern end of the appeal site with its northern and eastern walls virtually on the site boundaries. It comprises a rectangular main body of about 14.25 metres by 6.48 metres externally with a smaller rectangular smaller rectangular part of 4.8 metres by 3.0 metres attached to the eastern end of the southern wall. It is single storey with a flat roof and has roller-shutter doors. I saw that the two spaces contained a vehicle, bicycles, motor tyres, stacks of building materials and a well-equipped workshop.

8. In this case the application drawings show the height of the flat roof to be 2500mm metres above ground level, and the internal ceiling height to be 2225mm above the finished floor level. I measured the height from the highest ground level to the highest point of the building and established it as 2.5 metres. It therefore complies with the limit set in GPDO paragraph E.1(e)(ii).

9. The total footprint of the new building considerably exceeds the footprint of the existing house prior to extension. While the comparative size is not determinative in a case of this nature it may be a factor in assessment of whether the building is required for a purpose incidental to enjoyment of the dwellinghouse as such. It is settled law that this is taken to mean 'reasonably' required for such a purpose. Although the building meets the relevant size limitations of GPDO Class E, I am not wholly satisfied that the uses of the new building are necessarily incidental to the residential use.

10. I do not therefore consider the appellant has demonstrated that on the balance of probabilities the garage and shed should be regarded as development that is required for a purpose incidental to the enjoyment of the dwellinghouse as such and is therefore permitted under the provisions of Class E of Part 1 the GPDO. This does not necessarily preclude the submission of a further

application if relevant evidence is subsequently made available. However, thus far I consider insufficient evidence has been submitted to discharge the burden of proof.

Conclusions

11. 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 construction of a garage and shed building in the rear garden along the rear boundary of 'The Sparrows', Cox Hill, Great Easton, Dunmow CM6 2HL 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.

Stephen Brown

INSPECTOR