



Appeal Decision

Site visit made on 23 November 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/J1915/X/20/3257334

16 Hollybush Lane, Datchworth SG3 6RE

- 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 & Ms K & V Mead & Arther against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/0981/CLPO, dated 26 May 2020, was refused by notice dated 21 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 single storey side extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council considered the insertion of 2 rooflights in its determination of the application. The roof lights are shown as being located on the roof slopes of the main part of the building and do not therefore form part of the proposed extension. The appellants advise that these were not intended to be part of the application since they are aware of the limitations and conditions relating to other alterations to the roof. Given the wording of the application and the appellants' clarification in this regard, I am satisfied that these do not fall to be considered as part of this appeal.

Reasons

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 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.
4. 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.

¹ Town and Country Planning Act 1990 (as amended)

5. 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 appellants' case is that the proposed development is granted planning permission by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).
6. The appeal building is a substantial brick built dwelling which forms part of a terrace of dwellings which front onto Hollybush Lane. The proposal would involve removing a single storey store and flat roofed link to an outhouse and replacing it with a single storey garden room. The utility room would be converted into a bathroom and provide the link between the existing kitchen and new garden room. The extension would be finished in brickwork, with a natural slate roof to match the existing building.
7. The appellants state that the terrace and associated outbuildings existed on 1 July 1948 and comprise the original dwelling, under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). The appellants have provided 'Existing Plans & Elevations', which show the outbuilding as being connected to the main dwelling. However, planning permission 3/89/0602/FP for the formation of a roofed passage between the house and outhouse was not granted until 6 July 1989. I am therefore not persuaded that this represents the original dwelling for the purposes of the GPDO.
8. Class A of the aforementioned order permits the enlargement, improvement or other alteration of a dwellinghouse subject to certain conditions and limitations. This part of the GPDO is concerned with the original dwellinghouse, which means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.
9. Although the appellants confirm that they have no objection to the appeal proceeding on the basis that the proposed development is a single storey rear extension, the application was submitted on the basis that it would be a side extension. The appellants confirm that they considered the principal elevation and the main entrance to be in its south facing elevation. Consideration of the proposal as a rear extension would therefore be at odds with the appellants' own understanding as to what constitutes the principal elevation of the original dwelling.
10. Furthermore, although the Council describes the proposal as a 'single storey rear extension to an existing outbuilding' in its officer report, I do not believe this means it considered the proposal as a single storey rear extension for the purposes of applying the GPDO. Rather the description used by the Council reflects the fact that it considers the garden room would connect to and project from the rear of the existing outbuilding. In the absence of evidence to the contrary, I cannot therefore consider the proposal to be a rear extension.
11. Although the outbuilding existed on 1 July 1948, the Council advise that it was connected to the main dwellinghouse following a small infill extension, a matter which is not disputed by the appellants. Since the proposed garden room would project from and be connected to the outbuilding, the proposed extension

would not extend beyond a wall forming a side elevation of the original dwellinghouse.

12. The Technical Guidance² explains that if a new extension is being joined to a previous enlargement, it will not be permitted development if the size of the total enlargement exceeds the relevant limitations. In my view, this must include the outbuilding and lean to, since the overall extension would link to it and extend beyond it, forming one overall enlargement.
13. As set out under A.1.(ja) of Class A, any total enlargement would only be permitted where it complies with the limitations set out under A.1.(j), including that its width is no more than half the width of the original house. The proposed garden room, together with the outbuilding and lean to, would be more than half the width of the original house. As a consequence, it would exceed the limitations set out under A.1.(j)(iii) of Class A, Part 1 of Schedule 2 of the GPDO and is development for which planning permission is required.
14. Even if I were to accept that the elevation facing the highway forms the principal elevation and consider the appeal scheme to be an extension to the rear of the dwelling, the same difficulties are encountered. The depth of the proposed extension is stated to be 4.8m, which would exceed the limitations set out under A.1.(f) of Class A and would therefore be required to comply with the conditions set out under A.4. of Class A, Part 1 of Schedule 2 of the GPDO. This requires the developer to provide certain specified information to the local planning authority prior to commencing the development. I am not aware that this has been done.
15. Furthermore, as stated above, since the extension would be joined to a previous enlargement, the total enlargement must be considered, i.e. the existing enlargement in addition to the proposed. This would exceed the 6m allowed under A.1.(g) of Class A and would therefore be development for which planning permission is required.

Conclusion

16. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey side 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.

M Savage

INSPECTOR

² Permitted development rights for householders, Ministry of Housing, Communities and Local Government (2019)