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## Appeal Decision

Site visit made on 22 February 2021

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 01 March 2021**

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**Appeal Ref: APP/V1505/X/20/3259116**

**3 Brook Cottages, Laindon Common Road, Billericay CM12 9TA**

- 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 Mr and Mrs Paul Nash against the decision of Basildon District Council.
  - The application ref. 20/00686/LDCP, dated 16 June 2020, was refused by notice dated 10 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 single-storey rear extension not exceeding 4.0 metres from the rear wall of the original detached dwellinghouse.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. I note that the appeal form says that the application was made under s.191 of the Act, which covers lawfulness of existing use or operational development. However, it is clear from the application form that this appeal relates to an application under s.192, which relates to the lawfulness of proposed use or operational development, and that is the basis on which I have made my determination.
3. 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 (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed 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.

### Background

4. The appeal property is a primarily a two-storey dwelling. At some time it has been extended at the back with a single-storey lean-to about 2.5 metres deep containing the kitchen/utility room, and a further extension with a double pitched roof protruding into the garden by some 8 metres from the main back wall. The submitted drawings indicate that the latter extension has been significantly altered recently.

5. The proposal is to build a flat-roofed extension that would subsume the existing lean-to and extend 4.0 metres from the main back wall of the house. This would contain a utility room and separate WC. The kitchen would be moved to occupy the existing lounge and part of the dining room.

## Reasons

6. 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 in this case is whether the proposed development would be permitted under the provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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.
7. Class A of Part 1 to Schedule 2 of the GPDO permits the enlargement, improvement, or other alteration of a dwellinghouse. Paragraph A.1 of Class A then sets out circumstances where this allowance is not permitted.
8. The proposed enlargement would not extend more than 4 metres beyond the rear wall of the original dwellinghouse, and the appellants rely upon the argument that the proposal would not transgress the restriction in sub-paragraph A.1(f)(i) which states that:  
*'Subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse'.*  
There is also a provision that the enlargement should not exceed 4 metres in height, but the proposed extension would be within that limit.
9. However, paragraph A.1(ja) provides that development is not permitted if:  
*'any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j)'.*
10. The existing extension to the back of the appeal property is an enlargement of the original dwellinghouse and is about 8 metres long. The proposed enlargement together with the existing enlargement would therefore exceed the restriction to 4 metres imposed by A.1(f)(i).
11. I note that in certain circumstances paragraph A.1(g) permits a single-storey extension beyond the rear wall of a detached dwellinghouse that does not exceed 8 metres. However, the extension of about 8 metres already exists and the A.1(g) allowance is precluded in this case where the proposed extension together with the previously existing enlargement would exceed the 4-metre limit.
12. I conclude that on the balance of probabilities the proposal would not be permitted under provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

### 13. **Conclusions**

14. 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 proposed single-storey rear extension not exceeding 4.0 metres from the rear wall of the original detached dwellinghouse at 3 Brook Cottages, Laindon Common Road, Billericay CM12 9TA was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me by section 195(3) of the 1990 Act as amended.

*Stephen Brown*

INSPECTOR