
Appeal Decision

Site visit made on 23 March 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/P5870/X/20/3263877

76 Lower Pillory Down, Little Woodcote Estate, Carshalton SM5 4DD

- 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 Robert Townsend against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2020/00739, dated 25 May 2020, was refused by notice dated 14 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 detached outbuilding with provision of hardstanding.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application form did not provide a concise description of the development, which I have therefore taken from the decision notice and appeal form.
3. The Council's decision notice for the application lists the drawings that were considered and refused¹ and the Council has provided a copy of those drawings. The appellant provided drawings with the appeal indicating an alternative proposal². However, the appeal process is not an opportunity to put forward alternative proposals, and these do not have any bearing on my decision.

Reasons

4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful. The planning merits of the case are not relevant to the legal tests. The main issue is whether the Council's decisions to refuse to grant the LDC was well-founded.

¹ Drawing numbers 001, 002, 004 Rev A, 005 Rev A, 006 Rev A, 007 Rev A, 008, 009 Rev A.

² Drawing numbers 001, 004, 005, 006, 007, 008, 009

5. The Council states that the proposal fails to comply with limitations E.1(c) and E.1(h) of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). The limitation in paragraph (c) is that development is not permitted if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The limitation in paragraph (h) means that if the development includes the construction or provision of a verandah, balcony or raised platform it would not be permitted development.

Principal Elevation

6. The dwellinghouse is part of a semi-detached pair that face onto Lower Pillory Down, a private access road, at an angle. The house is set well back towards the rear of the plot, behind a large open garden. The front elevation faces the road and contains architectural features consistent with a front elevation, such as a front door. It is a stepped elevation as there is a gable element that projects in front of the rest of the front elevation. I agree with the parties that in this case the principal elevation is the front of the house, which faces Lower Pillory Down.
7. The Permitted development rights for householders - Technical Guidance September 2019 (TG) explains that development in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house is not permitted. It illustrates two examples of principal elevations, one of which is stepped. The illustration shows that the hypothetical line runs straight from the front corner of the nearest part of the principal elevation to the side boundary, such that buildings forward of the line are not permitted. There is no indication that it should follow the line of the road or the front boundary of the site, nor that it should have regard to a notional 'building line' in relation to adjacent dwellings.
8. Part of the outbuilding would be situated on land forward of the wall forming the principal elevation of the original dwellinghouse, in conflict with limitation E.1(c). For this reason, the outbuilding is not permitted development and express planning permission is required.
9. There is no stipulation in paragraph E.1(c) that the limitation only applies if the area to the front of the principal elevation is bordered by an adopted highway, and therefore the unadopted status of Lower Pillory Down does not have any bearing on my decision. As my decision rests on a legal test, the fact that the outbuilding would be further from the road than the house is not a factor that I can take into account, and my role is not to consider the visual impact of the development.

Verandah

10. The TG states that a veranda is understood to be a gallery, platform or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level. The proposed plans indicate a roof overhang along part of the east elevation, supported on timber posts above a paved patio. This creates a covered gallery along the outside of the building which constitutes a verandah.
11. The development therefore conflicts with limitation E.1(h) and is not permitted development.

Other Matters

12. The parties have provided comments as to whether the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse as such, as required by Class E. However, as I am dismissing the appeal for other reasons, I have not considered this matter further.

Conclusion

13. The basis of the application is that the proposal benefits from permitted development rights under Class E of Schedule 2 Part 1 of the GPDO, but I have found that it would conflict with limitations E.1(c) and (h) and therefore requires planning permission.
14. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of outbuilding compliant with Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015 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.

N Thomas

INSPECTOR