



Appeal Decision

Site visit made on 20 April 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Appeal Ref: APP/L3815/X/20/3256176

Meadow Cottage, Hawksfold Lane East, Fernhurst GU27 3JW

- 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 Dan Atkins against the decision of Chichester District Council.
- The application Ref SDNP/19/06009/LDP, dated 18 November 2019, was refused by notice dated 11 February 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 described as *"This application seeks a certificate of lawful development (proposed) under Section 192 of the Town and Country Planning Act 1990 (as amended). The application is made under the auspices of the Town and Country Planning (General Permitted Development) Order 2015 [sic] Schedule 2, Part 1 (Class A) to build one single-storey rear extension to the detached dwelling known as Meadow Cottage."*

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. The description of development in the banner heading above is taken from the application form. It is clear from the submitted plans that the proposal is for a single storey rear extension. The Council dealt with the application on that basis and so shall I.

Application for costs

2. An application for costs was made by Mr Dan Atkins against Chichester District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether it has been shown that the proposal is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A (GPDO).

Reasons

4. It is for the appellant to show that an LDC should be issued in respect of the proposal, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a detached two storey cottage of traditional character and external materials. There is a single storey lean-to attached to the north-west side of the cottage.

6. The GPDO Article 3, Schedule 2, Part 1, Class A grants planning permission to extend a dwelling where the limitations concerning the size and location of the extension in paragraph A.1 are met. As the property is situated in the South Downs National Park (NP), the limitations in paragraph A.2 must also be met. Furthermore, the conditions at paragraph A.3 must be complied with.
7. The proposal entails extending the cottage at single storey level across the entire rear elevation. The Council did not dispute that the proposal, which would be no greater than 4 m in depth and height and would not extend beyond a wall forming the principal elevation of the cottage, met the relevant limitations in Class A paragraph A.1 (b)-(f) and (i) together with those in paragraph A.2 (a), (c) and (d). I found no reason to reach any different conclusions.
8. Be that as it may, the limitation at paragraph A.1 (j) (iii) does not permit an extension beyond a wall forming the side elevation of the original dwelling to be of a width greater than half that of the original structure. Additionally, as the property is in the NP the limitation at paragraph A.2 (b), which does not permit extending beyond a wall forming a side elevation of the original dwelling, is relevant. The definition of 'original' in the GPDO at Article 2 (1) applied to the cottage, is as it existed on 1 July 1948.
9. The lean-to walls incorporate bricks and tile hanging which for the most part differ appreciably in colour to the external wall materials of the rest of the cottage. The bricks also have a more uniform bond, compared to the variety in brick bonding found elsewhere on the cottage. On the front and rear elevations, there are vertical joints between the external wall materials of the cottage and those of the lean-to. The former external wall of the cottage is visible through the lean-to windows. The lean-to rainwater goods are plastic, whilst those of the cottage are of traditional metal construction. These factors all suggest that the lean-to is of more recent origin than the cottage.
10. An extract from the Ordnance Survey (OS) map 1912 edition including the property was provided. This depicts what could have been a single storey structure in a similar position to that of the lean-to. However, the map scale is too small for there to be any reasonable certainty that the footprint of any structure then in situ equates to that of the lean-to. Moreover, in the absence of firm evidence to indicate otherwise, there is a greater likelihood of the map depicting a previous addition to the cottage, such as a woodstore or outhouse. It is not uncommon for such structures to be taken down and rebuilt, particularly over the passage of more than a hundred years. Therefore, the historic OS map is not persuasive evidence of the lean-to having originated prior to 1 July 1948.
11. The brick joints found on the rear elevation of the lean-to in particular are consistent with the use of a coarse, lime-based mortar. Historic England guidance¹ suggests that historically such mortars would have been used in or before the early 20th Century, whereafter the use of cement-based mortars became more common. Nevertheless, that does not necessarily rule out later use of lime mortar for the jointing, either when erecting the lean-to or in repointing. In this respect, the variation found in the mortar materials and the finish of the brick jointing elsewhere on the lean-to and on the cottage, suggests that repairs have been made to the mortar at various times.

¹ Repointing Brick and Stone Walls Guidelines for Best Practice: Historic England January 2017.

Moreover, the mortar joints found on the lean-to are for the most part noticeably wider compared with the tighter joints on the cottage where lime mortar is evident. This also suggests that the lean-to originated more recently. Due to the above uncertainties, in the absence of firm evidence to indicate otherwise I am not persuaded that the mortar material provides a reliable indication of the age of the lean-to.

12. The appellant supplied a photograph of the rear elevation of the property including the lean-to, purportedly dating from February 1999; I am given to understand that this photograph is from an estate agents' sales particulars. The Council supplied extracts from aerial imagery including the property purportedly taken in 2001 and 2007. However, as those images are of low resolution and the relevant part of the property is largely in shadow, it is impossible to say whether the lean-to is present with any degree of certainty. In any event, having regard to the weathering of the external materials, the lean-to is likely to have been extant for considerably longer than fourteen years or so. As a result, the aerial imagery does not cast doubt on the lean-to having originated prior to February 1999. Nevertheless, this does not lend significant weight to the appellant's case as in the absence of firm evidence showing otherwise, in my view the lean-to is still more likely to have originated at some stage during the preceding five decades.
13. Consequently, the available evidence does not show with a sufficient degree of clarity and precision that the lean-to originated prior to 1 July 1948. It follows that the lean-to has to be regarded as an extension beyond a wall forming the side elevation of the original cottage for the purposes of the GPDO.
14. The Government's Technical Guidance² advises that where a side extension has been built separately, as the available evidence suggests is the case in this appeal, it is the width of the original dwelling that is relevant for calculating the 'half width' limit in respect of a further extension. Due to its overall width the proposal would clearly be greater than half the width of the original cottage and by extending to the rear of the lean-to, it would be beyond a wall forming the side elevation of the original cottage, thereby not meeting the limitation at Class A, paragraph A.1 (j) (iii). In any event, as the proposal would extend beyond a wall forming a side elevation of the original cottage it does not meet the limitation at paragraph A.2 (b).
15. In their appeal statement, the Council also argued that the proposal does not meet the condition at paragraph A.3 (a), which requires the external materials to be of a similar appearance to those of the cottage. This did not form part of the reason for refusal on the Council's decision notice. As the appeal will not succeed for the reasons set out above in any event, I do not intend to consider this matter further.
16. Therefore, on the balance of probability the appellant has not shown that the proposal is granted planning permission by the GPDO Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of a grant of express planning permission, the proposal would not be lawful for planning purposes.

² Permitted development rights for householders Technical Guidance: MHCLG September 2019.

Conclusion

17. 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 rear 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.

Formal Decision

18. The appeal is dismissed.

Stephen Hawkins

INSPECTOR