



Appeal Decision

Site visit made on 7 April 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2021

Appeal Ref: APP/J3720/X/20/3264781

Bramleys, Darlingscote Road, Shipston-on-Stour CV37 6LN

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Nursall against Stratford on Avon District Council.
 - The application (Ref.20/02534/LDP) is dated 9 September 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which an LDC is sought is: 'proposed garage conversion'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Council has not given notice to the appellant of its decision on the LDC application within the prescribed period. The appeal is therefore made under section 195(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
3. I note the description of use for which an LDC is sought was amended from: 'The existing garage doors will be replaced with a bay window. The existing door and window openings on the side elevation will be replaced with a French door and new window openings. Refer to drawing no. 20-48-12 Scheme Elevations' to 'proposed garage conversion' which is taken from the appeal form and used in the header above. It was confirmed that the change of description was agreed by both parties. Notwithstanding the amended description, the application is deemed to have been made under s192(1)(b) for operational development.
4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority (the LPA) is provided with information satisfying it 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. In any other case they shall refuse the application.
5. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

6. It is clear from the evidence provided within the Council's delegated report¹ that had they made a decision on the application it would have been a refusal. The Council took the view that the operational development required to facilitate the proposed garage conversion would require express planning permission. However, since the Council has not determined the application, the main issue for this appeal is whether that deemed refusal would have been well-founded.

Reasons

7. The proposal is for the conversion of the garage to additional residential accommodation in the form of a bedroom and bathroom. To facilitate this use, alterations to the garage building are proposed by way of replacing the garage doors with a bay window and replacing the door and window openings on the side elevation with French doors and new window openings.
8. Section 55(2)(d) of the 1990 Act, provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse shall not be taken (for the purposes of the Act) to involve development. As the garage would be used as additional accommodation, I concur with both parties that there would not be a material change of use and express planning permission would not be required.
9. However, the Council argues that the proposal would involve external changes to the building and that these changes would be significant, enough to be material and therefore would amount to development. They consider that volume would be added by the insertion of a bay window to an extent that is more than de minimis. Furthermore, the Council considers that the proposed works constitute an enlargement to the dwellinghouse because the garage and dwellinghouse are linked by a single plastic roof. As such, the proposal should be assessed against Part 1, Class A² of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) and that it would breach the limitations in Class A.1(e).
10. At my site visit I saw that the garage was a building independent of the house with no linking structure. Whether or not the buildings had been linked at the time of the application, and with no further details to make me think otherwise, I consider that the form and material of the linking roof were likely to provide little more than shelter from inclement weather when passing between the house and the garage, rather than a structural element. Accordingly, the garage building does not fall to be assessed against PD rights provided within Part 1, Class A of the GDPO.
11. The GPDO Part 1, Class E confers parallel rights of maintenance, improvement and other alteration of buildings and enclosures in the curtilage of a dwellinghouse, where the building is used for purposes incidental to the enjoyment of that dwelling. The Government's Technical Guidance³ advises that an incidental purpose would not cover normal residential uses, such as the use as a bedroom, bathroom, or kitchen. As the garage would contain primary living accommodation, it would not normally be considered to be in incidental

¹ Dated 3.12.2020

² Class A – enlargement, improvement or other alteration of a dwellinghouse

³ MHCLG Permitted development rights for householders Technical Guidance Sept 2019

use. Accordingly, the garage building would not fall to be assessed against PD rights provided within Part 1, Class E of the GPDO.

12. However, even if the proposal was considered against the provisions of Class A or Class E, the introduction of the bay window would conflict with A(e)(i) the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse; and E1(c) where any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

Would the proposal involve development?

13. Section 55(2) of the 1990 Act states that "The following operations ... shall not be taken for the purposes of this Act to involve development - (a) the carrying out for maintenance, improvement or other alteration of any building of works which - (ii) do not materially affect the external appearance of the building".
14. In practice most changes to the fabric or external appearance of buildings are deemed to be building operations because of the wide scope of the definition at s.336 of the 1990 Act which includes "other operations normally carried on by a builder".
15. The replacement of the garage doors with a bay window and the replacement of door and window openings with French doors and new window openings would, as a matter of judgement, materially affect the external appearance of the building, particularly the front elevation which is the public face of the building. The extent of the development proposed would not, in my opinion, fall within the de minimis principle. Therefore, the proposed operations would not have been lawful on the date of the application and express planning permission would have been required.

Conclusion

16. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the replacement of the existing garage doors with a bay window and the replacement of door and window openings on the side elevation with a French door and new window openings was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR