
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/J1915/X/21/3273612

1 Hole Farm Cottages, Albury Hall Park, Albury, Ware SG11 2JE

- 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 A Welsh against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/2192/CLPO, dated 6 November 2020, was refused by notice dated 1 March 2021.
 - 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 double storey rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.

Main Issue

3. The main issue is whether the Council's decision to refuse an LDC is well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

4. The appeal property comprises a semi-detached house. The appellant proposes to construct a two-storey rear extension to provide a garden room on the ground floor and a bathroom above. The proposed development would be positioned between, but not connected to, a single storey utility room to the south and a lean-to kitchen extension to the north. The proposed extension would extend some 3m from the rear wall of the main house and would be approximately 4m wide.

5. Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants permission for classes of development described as permitted development in Schedule 2 to the Order and subject to any relevant exception, limitation or condition. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class A of Part 1 specifically addresses the enlargement, improvement or other alteration of a dwellinghouse.
6. The principal point at issue is the Council's determination that the proposed extension would not comply with the limits and conditions in Class A, paragraphs A.1(j)¹, A.1(ja)² and A.3 (c)³ of Part 1 of Schedule 2 of the GPDO.
7. Both parties refer to Government guidance in relation to Class A contained within the publication 'Permitted development rights for householders – Technical Guidance'⁴ (TG).
8. The Council's evidence⁵ indicates that the existing utility room forms part of the rear elevation and is part of the original dwellinghouse (formerly the kitchen). Whilst not part of a principal elevation, the side wall of the utility room forms a side elevation of the original dwellinghouse. In this case, although the proposed extension is not physically joined to the utility room, it would extend beyond the side wall of the utility room, would exceed 4 metres in height and would have more than a single storey. Moreover, the proposed extension would also extend beyond the side wall of the original dwellinghouse that formed the original bathroom prior to the subsequent extension⁶. Consequently, the limits and conditions of Class A.1(j) would not be met. Thus, the proposed development would not be permitted development (PD) by virtue of Class A of the GPDO.
9. The appellant with reference to the gap between the proposed extension and the utility room, has drawn my attention to an LDC application⁷ for a two-storey rear extension and an appeal decision⁸ concerning two existing single-storey rear extensions. I acknowledge the importance of consistency in decision-making. These examples are for different developments which were each assessed on the particular facts and site-specific circumstances and are not directly comparable with the appeal proposal before me. As such, the LDC application and appeal decision have only limited weight.
10. The GPDO grants planning permission where all the relevant conditions and limitations are met. I have found that Class A.1(j) would not be met. Consequently, the planning permission sought has not been granted. As the

¹ Paragraph A.1 (j) states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would – i) exceed 4 metres in height, ii) have more than a single storey, or iii) have a width greater than half the width of the original dwellinghouse.

² A.1 (ja) states that development is not permitted by Class A 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).

³ Paragraph A.3 (c) states; where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

⁴ Published by the Ministry for Housing, Communities and Local Government, September 2019.

⁵ Appendix 1 of the Council's Statement.

⁶ Planning permission Ref: 3/787-78.

⁷ Ref: 3/17/1702/CLP.

⁸ APP/T0355/X/18/3211902.

proposed extension would not comply with Class A.1(j) I have not considered the other limits and conditions in paragraphs A.1(ja) and A.3(c).

11. On the evidence available to me and having regard to all other matters raised, I find that, as a matter of fact and degree, it has not been demonstrated that the proposed development would be PD by virtue of the GPDO.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed development 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.

Elizabeth Jones

INSPECTOR