



Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/U1430/X/21/3282409

1 Burnham Cottages, Tram Road, Rye Harbour TN31 7TZ

- 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 Mrs Jane Mills against the decision of Rother District Council.
- The application Ref RR/2021/850/O, dated 8 April 2021, was refused by notice dated 30 July 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 an extension of the original building.

Summary Decision: The appeal is dismissed.

Background and Main Issue

1. 1 Burnham Cottages is an end of terrace house with a lean-to conservatory to the rear. The proposal is to replace the conservatory with a larger single storey extension. It would project across most of the width of the rear of the house and a small amount beyond the line of the existing side wall of the house.
2. The appellant suggests that the extension would comply with Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This grants planning permission for the enlargement of a dwellinghouse subject to a number of restrictions and conditions.
3. The Council determined that the proposal would not comply with the restriction at Class A.1(j)(iii), Part 1, Schedule 2 of the GPDO. This states that the enlarged part of the dwellinghouse should not extend beyond a wall forming a side elevation of the original dwellinghouse and have a width greater than half the width of the original dwellinghouse. In addition, they state that it would not accord with the condition at Class A.3(a), Part 1, Schedule 2 of the GPDO that materials used in exterior work must be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
4. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Width

5. The requirements at Class A.1(j)(iii), Part 1, Schedule 2 of the GPDO refers to the enlarged part of the dwellinghouse where it extends beyond a side wall. This would include any extension that projects beyond a straight line running along the side of the existing building and continuing across the rear garden. This relates to the total width of the extension, not just the part beyond that line.
6. In this case, the proposal would extend to the rear of the existing dwelling and would project a short distance beyond the line along the side of the existing building. Although the width of the part beyond that line would be modest, the total width of the extension would be greater than half the width of the existing dwelling.
7. As a result, I conclude that the extension would not comply with the requirement at Class A.1(j)(iii), Part 1, Schedule 2 of the GPDO. Consequently, it would not benefit from the planning permission granted by the GPDO for that reason.

Materials

8. I note that the appellant states the intention is to clad the extension in composite cladding. They suggest this reflects the timber cladding that is common within the local area. However, I understand the existing dwellinghouse is constructed in brick. Consequently, the cladding proposed for the extension would not be of similar appearance to the materials used on the exterior of the existing dwellinghouse.
9. For that reason, if the extension were constructed with composite cladding it would not comply with the condition at Class A.3(a), Part 1, Schedule 2 of the GPDO. As a result, I conclude that it would not benefit from the planning permission granted by the GPDO.

Conclusion

10. 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 extension at 1 Burnham Cottages, Tram Road, Rye Harbour TN31 7TZ 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

11. The appeal is dismissed.

AJ Steen

INSPECTOR