The Planning Inspectorate

Appeal Decision

Site visit made on 5 January 2022

by Felicity Thompson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/N4720/X/21/3282248
7 Croft Terrace, New Farnley, Leeds LS12 5DJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Andrew Bailey against the decision of Leeds City Council.
- The application ref 21/04691/CLP, dated 25 May 2021, was refused by notice dated 26 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 first floor rear extension to existing terrace dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note that the appellant indicated on the appeal form that the application was made under section 191 of the Act. However, it is evident from the original application form and submitted evidence that the application was made under section 192 of the Act (proposed use or development), and it is on this basis that I have considered the appeal.

3. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

4. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.

5. The Council's reason for refusal is that the extension would extend beyond a wall forming a side elevation of the original dwellinghouse, exceed 4 metres in height and have more than a single storey and a width greater than half the width of the original dwellinghouse.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

7. The appeal site is a mid-terrace dwelling with a single storey outrigger extension to the rear. Consequently, the rear is stepped and there is more than one wall which forms the rear wall of the original dwellinghouse.

8. The Government's Technical Guidance[1] indicates that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front or rear wall. The elevation of the outrigger extension which faces into the yard is not a front or rear wall and is therefore a side elevation.

9. The proposed development involves the erection of an extension over and to the side of the single storey outrigger extension, joining the roof.

10. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Article 3 Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to development within the curtilage of a dwellinghouse and grants permission for the enlargement, improvement, or other alteration of a dwellinghouse.

11. In order to be permitted development the proposed development must meet *all* [my emphasis] the limitations and conditions under each Class relevant to the proposal.

12. In this case the proposed extension would join the existing roof. Although not raised by the Council, since alterations to the roof of a house are not permitted under Class A, by virtue of the Class A (k)(iv) requirement, the proposal would also need to meet those limitations and conditions in Class B which relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

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

14. In this case, the plans show that the proposed extension overlaps the side elevation of the outrigger extension, albeit by a small amount. Nevertheless, it would therefore extend beyond the side elevation of the original dwellinghouse, would exceed 4 metres in height, have more than a single storey and have a width greater than half the width of the original dwellinghouse.

15. Accordingly, the proposal would fail to meet the Class A.1.(j)(i) (ii) and (iii) requirements. It would also fail to meet the Class A (k)(iv) requirement. Hence it would not be permitted by Class A of Part 1 of Schedule 2 of the GPDO.

16. Additionally, there is no evidence that the proposed extension would comply with the Part 1 Class B requirements, specifically B.1 (d)(i).

17. Since the proposal does not comply with all the limitations and conditions in Class A, nor do I have evidence that it complies with those in Class B, it is not

[1] Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

therefore permitted by the GPDO. It follows that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the proposal 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.

Felicity Thompson

INSPECTOR