The Planning Inspectorate

Appeal Decision

Site visit made on 1 March 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/Z1510/X/21/3282873
70 Silver Street, Silver End CM8 3QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Stuart Way against the decision of Braintree District Council.
- The application Ref 21/01292/PLD, dated 20/04/2021, was refused by notice dated 16 June 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 single storey rear extension.

Decision

1. The appeal is dismissed.

Main Issue

2. The planning merits of the proposal are not relevant in an appeal against a refusal of an LDC application. The main issue is whether the Council's decision to refuse the LDC was well-founded. In this case, particular regard is to be had as to whether the development would be granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. The proposal involves a single storey extension to the rear of a detached dwellinghouse. The property is single-storey with a large-hipped roof.

4. Section 191(2) of the Act states that operations are lawful at any time if: a) no enforcement action may be taken in respect of them; and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. Article 3(1) of the GPDO grants planning permission for those classes of development defined as 'permitted development' under Schedule 2. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse. Class A of that part states that the enlargement, improvement or other alteration of a dwellinghouse is permitted development.

6. Paragraph A.1(d) of Class A states that development is not permitted by class A if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.

7. The Act does not define the term "eaves", nor does the GPDO. The Permitted Development Rights of Householders Technical Guidance published in 2019 by the then Ministry of Housing Communities and Local Government sets out that the eaves of a house are the point where the lowest point of a roof slope meets the outside wall.

8. The submitted plans show the extension would have very shallow, almost flat roof pitch. It is clear from the proposed drawings that the eaves of the extension would be higher when measured from ground level than the lowest point of the roof slope where it meets the outside wall of the existing dwelling. The appellant has not disputed this matter in evidence. As a result, the development would fail to meet the limitation under paragraph A.1(d) and would not therefore be permitted under Class A.

9. Article 2(3) of the GPDO states that land referred to within the GPDO as Article 2(3) land includes conservation areas. The appeal site lies within the Silver End Conservation Area. Paragraph A.2(b) of Class A states that in the case of a dwellinghouse on article 2(3) land, 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.

10. The rear of the appeal property contains an original projection which accommodates windows and French doors. It comprises two side walls with an angled rear wall. The proposed extension would include removal of part of the projection. The appellant refutes the Council's position that the side wall of the projection forms a side elevation of the dwellinghouse.

11. However, this matter was addressed by a previous Inspector in February 2021[1]. In that instance, the appellant had appealed a previous refusal of an LDC application for, amongst other things, a single storey rear extension. The extension was larger than that proposed here. In that decision, the Inspector concluded that the side walls of the projection amounted to side elevations of the original dwellinghouse for the purpose of the GPDO.

12. The appellant appears to have advanced similar arguments here as they did at the previous appeal. The fact that the side wall of the projection would be removed is a moot point, since one must consider the existence of the projection as it stands at the date the application was made. There is nothing before me to suggest circumstances have changed such that I could come to a different conclusion on this matter than the previous Inspector. Thus, it follows that the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse and therefore fail to meet the limitation under A.2(b) of Class A.

13. In any event, even were I to agree with the appellant that the development does not fall under the limitation of paragraph A.2(b), the proposal still fails on the limitation in paragraph A.1(d). As such, the development would not have been permitted by Class A at the date the application was made.

14. The appellant raises several concerns regarding their communication with the Council. It is also said that a precedent has been set with other extensions in the area. However, such matters do not address the lawfulness of the

[1] PINS Ref: APP/Z1510/X/20/3259433

proposal, the matter with which I am solely concerned. Moreover, the appellant's evidence to this appeal offers little response to the Council's two grounds for refusing the LDC application in respect of the GPDO.

15. I conclude, therefore, that at the date the LDC application was made, the development would not have been granted planning permission by Article 3(1) of the GPDO. In the absence of any evidence of any other planning permission being granted, it follows that the development would not have been lawful since enforcement action may have been taken in respect of it. That is on the basis that the proposal would have involved development for which planning permission was required but for which none existed.

Conclusion

16. 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.

J Whitfield

INSPECTOR