



## Appeal Decision

Site visit made on 4 January 2022 by Thomas Courtney BA(Hons) MA

### **Decision by Hollie Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 April 2022**

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### **Appeal Ref: APP/M1520/D/21/3279157**

### **Argyle, Great Burches Road, Thundersley, Benfleet SS7 3NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Steve Austin against the decision of Castle Point Borough Council.
  - The application Ref 21/0203/HASPA, dated 26 February 2021, was refused by notice dated 26 April 2021.
  - The development proposed is the enlargement of a dwellinghouse consisting of the construction of one additional storey.
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### **Decision**

1. The appeal is dismissed.

### **Appeal Procedure**

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### **Application for Costs**

3. An application for costs was made by Mr S. Austin against Castle Point Borough Council. This application is the subject of a separate decision.

### **Procedural Matters**

4. In the interest of accuracy, the description of development used in the header above is based on that used on the Council's decision notice.

### **Main Issues**

5. The decision notice states that insufficient information was submitted in order to enable the Local Planning Authority to establish whether the development would comply with AA.1.(h) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in respect of the floor to ceiling height of the proposed additional storey. Class AA.1.(h) requires any additional storey, measured internally, does not exceed the lower of- (i) 3 metres; or (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing dwelling.
6. Drawing No. 06 Rev B, submitted by the appellant, indicates that the proposed floor to ceiling height of the additional storey would measure 2.350 metres. It would thus be lower than 3 metres and would not exceed the floor to ceiling

height of the existing ground floor which is 2.350 metres. On this basis, I am satisfied that the appellant has submitted sufficient information to establish that the development would comply with the provisions set out in AA.1.(h).

7. Therefore, the main issue in this appeal is whether the proposal would constitute permitted development.

### **Reasons for the Recommendation**

8. The appeal site comprises a detached bungalow located on the southern side of Great Burches Road. It lies within a large plot in a rural and mostly residential area characterised by detached dwellings of varying sizes and styles. A large, pitched roof garage abuts the common boundary with the neighbouring property directly to the west.
9. The Council argue that the property does not benefit from permitted development rights by virtue of a restrictive condition placed on the original consent for the erection of the existing bungalow in 1989 (condition 2 of appeal decision ref. T/APP/M1520/A/89/120464/P4A). The condition restricted development specified in Classes A to E inclusive of Part 1 of Schedule 2 of the Town and Country Planning General Development Order (GPDO) 1988. condition No.2 of the appeal decision states that '*No development of the type specified in Classes A to E inclusive, of Part 1 of Schedule 2 of the Town and Country Planning General Development Order 1988, shall be carried out without the prior written permission of the local planning authority.*'
10. Class AA was introduced in August 2020 as an amendment to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The appellant opines that the appeal property should benefit from the right to erect an additional storey through Class AA as the condition in dispute only removes permitted development rights set out under Classes A to E of Part 1, Schedule 2 of the GPDO 1988. However, it is considered that the purpose of the condition is still clear and relevant. Whilst it is not worded to include later versions of the GPDO, it is not necessary for the condition to refer to the most up-to-date version of the Order in order for it to still remain in effect.
11. Furthermore, the appellant states that the condition specifies the classes of development that are excluded (A to E) and does not rule out any other extensions. I do not concur with this interpretation as the condition states '*Classes A to E inclusive*' with Class AA being inserted between Classes A and B. Therefore, the restrictions on externally altering and extending the dwelling in condition 2 still apply.
12. I acknowledge that the proposal would not breach any of the main limitations set out in Class AA, Schedule 2, Part 1 of the GPDO. However, the effect of Article 3(4) of the GPDO is that development which would be contrary to a condition imposed on a grant of planning permission cannot be permitted development in the first place. It follows that to be carried out lawfully the proposal would have to obtain express planning permission following the submission of a planning application.
13. To conclude, given the above, the proposal would be in breach of condition and would therefore not comply with the conditions, limitations, and restrictions applicable to development by Class AA of the GPDO.

**Recommendation**

14. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed and prior approval should not be granted.

*Thomas Courtney*

APPEAL PLANNING OFFICER

**Inspector's Decision**

15. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR