



Appeal Decision

Site visit made on 9 June 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25TH JULY 2022

Appeal Ref: APP/G5180/X/21/3267241

Land at 52 Cudham Lane North, Cudham, Sevenoaks TN14 7RA

- 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 Peter Smuts against the decision of the Council of the London Borough of Bromley.
 - The application ref DC/20/03279/ELUD, dated 24 August 2020, was refused by notice dated 20 October 2020.
 - The application was made under section 191(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.
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Preliminary Matters

1. The description of the development given above is an extract from the much longer description given in the LDC application form. The above adequately describes the development for the purposes of this appeal.
2. I had intended to undertake my visit to the site as an access required site visit, which only required access to the site to be made available to me. There was no need for the parties to accompany me on site.
3. Unfortunately, the letters notifying the parties of 9 June site visit arrangements were not sent out. I attended the site on 9 June, not knowing this. The owner of the property was not, therefore, aware that a site visit was to take place that day. Nevertheless, she agreed to let me into the garden to view the site.
4. The parties were subsequently advised of the above and were given the opportunity to make any comments on the site visit and how it was undertaken. There was no objection from any party.
5. The plans submitted with the LDC application show an 'existing' arrangement without the extension subject of this appeal and a 'proposed' arrangement with the extension. Despite how the plans have been labelled, the LDC application was submitted under section 191 of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is an application for a LDC for an existing use or development, rather than proposed. Furthermore, there is no suggestion that the LDC application was made prior to the construction of the extension.
6. I have, therefore, regarded the existing plans as showing the dwelling prior to the construction of the extension and the proposed plans as showing the dwelling with the extension as constructed. To confirm, my determination of

the appeal will be on the basis of a LDC sought under section 191 of the 1990 Act.

Main Issue

7. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority.
8. Whilst I note the appellant's comments that relate to the planning merits of the extension¹, for the avoidance of doubt, these are not relevant to my determination of the appeal. The main issue is whether the Council's decision to refuse to grant a LDC was well founded. The burden of proof is on the appellant, and the test of the evidence is the balance of probabilities.
9. It is the appellant's case that the proposed development is permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) as it would be development falling within Class A, Part 1, Article 3, of Schedule 2, hereinafter referred to as Class A. This permits the enlargement, improvement or other alteration of a dwellinghouse. Under Class A, A.1. specifies the type of development that would not be permitted by Class A.
10. The Council point to criterion A.1.(j)(iii), which states that development would not be 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 have a width greater than half the width of the original dwellinghouse.
11. Although I must determine whether or not the development subject of the appeal was lawful on the date the LDC application was made, the appellant's case is that the extension was permitted by the Order at the time it was constructed. This date is, of course, prior to the submission of the LDC application.
12. The deemed planning permission granted by the Order is crystallised when the development that falls within a particular class is begun. The Order does not grant retrospective planning permission. Accordingly, in order to determine whether or not the development was lawful at the time the LDC application was made, I must consider whether or not it would have been permitted by the Order at the time it was begun. In view of this, it is important to note that neither party have suggested that the development was begun before the Order and the provisions of Class A were in place, nor that they have changed since that time.
13. In view of the above, the main consideration in this case is whether or not the development complies with criteria A.1.(j)(iii) of Class A.

¹ He suggests that there have not been any objections to the development; that it matches the attached next door property extension profile; and that it fits in harmoniously with the setting.

Reasons

14. I have had regard to the existing plans, which show that there was a two storey projecting element on the rear elevation of the dwelling that comprises a five sided bay window over two floors. I consider this two storey projecting element to be more than a small decorative or architectural detail of the rear elevation. It added to the floorspace of the ground and first floor, and was a substantial feature over two storeys of the building. Indeed, I noted that the first floor of this element is still present on the rear elevation of the dwelling. The submitted plans show that this projecting element comprised a brick finish and window units, which are still visible at first floor. As was the tiled, gable roof above, which projects from the rear roof slope.
15. I regard this projecting element as comprising five walls or elevations. The central elevation is clearly rear facing; it is parallel with the rear elevation of the dwelling. However, the two elevations either side of this are at an angle to both the rear and side elevations of the dwelling. The elevations of this projecting element adjacent to the main rear elevation appear from the plans to be at a right angle to the main rear elevation of the dwelling.
16. In addition to this, the existing plans also show a single storey projection to the rear of the dwelling, labelled as 'utility'. I can see from the plans that this was also more than an architectural feature of the dwelling, particularly having regard to the three walls and roof of this projection.
17. I have been given no reason to conclude that either the two storey or single storey projecting elements are not part of the original dwellinghouse.
18. The MHCLG Technical Guidance states that 'a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall'. It advises that 'houses will often have more than two side elevation walls'. The Technical Guidance also provides an illustrative example of walls forming a side elevation, although this does not show the arrangement found at the appeal site. Nevertheless, this demonstrates that fairly narrow sections of wall can be regarded as a wall forming a side elevation for the purposes of A.2.(b).
19. Having regard to the Technical Guidance, I am unable to identify the two angled elevations of the two storey rear projecting element as front or rear walls. Although not entirely side facing, the Technical Guidance leads me to identify these elevations as a side wall. In addition to this, I can easily identify the elevations of the two storey projecting element adjacent to the main rear elevation of the dwelling as side walls, particularly having regard to their angle when compared with the main rear elevation of the dwelling. I conclude the same with regard to the side elevations of the single storey utility projection. Whilst I acknowledge that all of these side elevations are particularly narrow, the MHCLG Technical Guidance does not indicate that there is a minimum depth when considering whether or not a wall forms a side elevation.
20. The extension has been added to the side of the elevations of the two storey projecting element, as well as to one of the side elevations of the single storey projecting element. Although also extending from the rear wall of the dwelling, the extension extends beyond a wall forming a side elevation of the original dwellinghouse.

21. In addition to this, the extension spans across the full width of the dwelling. As such, it has a width greater than half the width of the original dwellinghouse. Accordingly, I find that as a matter of fact and degree the proposed development would be that specified in A.2.(j)(iii) and that it would not, therefore, be permitted by Class A.
22. My attention has been drawn to a prior approval decision reference 18/02979HHPA, a copy of which has been provided by the appellant. I do not, however, have any other details of the prior approval application, such that I can be satisfied that the development subject of that application is the same as the development subject of this appeal.
23. Notwithstanding this, I note that the important notes provided with the decision advise that the notice indicates that the proposed development would comply with condition A.4 of the Order, and that it does not indicate whether or not the proposed development in that case would comply with any of the other limitations or conditions of Class A. This can only be right, since development is only lawful if it is permitted by the Order, which in this case means that it must comply with all conditions and limitations of Class A.
24. That the MHCLG Technical Guidance was published prior to the date of the prior approval decision is of no relevance in this case. Even if the guidance was published prior to the construction of the development, it does not alter the relevance of the guidance it provides to this case. It is not suggested that there has been a change to the relevant criterion of the Order (A.1.(j)(iii) in this case) since the extension was begun, or that there was any other guidance at that time, relevant to this criterion, that conflicts with the guidance given in the MHCLG document.
25. I have been given no other reason to conclude that the development subject of the LDC application was lawful on the date the application was made, and I am unable to identify any having regard to the evidence available to me. Accordingly, and having regard to all of the above, I conclude that the development would not have been permitted by Class A on the date the LDC application was made.

Conclusion

26. 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 erection 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.

Formal Decision

27. The appeal is dismissed.

J Moss

INSPECTOR