The Planning Inspectorate

Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 August 2022

Appeal Ref: APP/V0510/X/22/3290885
16 Hempfield Road, Littleport, Ely, CB6 1NW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Anthony McFarthing against the decision of the East Cambridgeshire District Council.
- The application Ref. 21/01444/CLP, dated 4 November 2021, was refused by notice dated 29 December 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is proposed bike and firewood shed.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Since the buildings subject of the appeal are proposed, rather than completed, and having studied the detailed drawings, documents, and other appeal submissions from the parties, I am satisfied a decision can be made without a physical inspection of the site.

2. In order for a LDC to be granted the onus is on an appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful.

3. The only factors relevant to my decision are those of factual matters, planning law, and application of judicial authority. As such, matters relating to the merit of the development, or to complaints of poor communication during the application process, are not relevant.

Main Issue

4. This is whether the Council's decision to refuse an LDC was well founded. It turns on whether the proposed open shed would be lawful by benefitting from the planning permission ("permitted development") available via Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").

Reasons

5. Class A provides for the enlargement, improvement or other alteration of a dwellinghouse. Other than in respect of the limitations at A.1 and (ja) there is no dispute that the shed would satisfy all other specified limitations and conditions of Class A, and I have no reason to consider otherwise.

6. Limitation A.1 and (ja) states: *development is not permitted by Class A if –*

   any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);

7. Relevant to the above, it should be noted that Article 2 of the Order defines "original" (for buildings not on crown land) as follows:

   "original" means - (a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date; (b) in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built.

8. Taking account of the above factors, together with the undisputed planning history of the site and the drawings and evidence before me, it is clear that the garage extension to the house, permitted in 1980 and thereafter constructed, does not form part of the "original" dwellinghouse as defined by the Order.

9. Following on; since the proposed shed would be attached to the side wall of the older garage extension, rather than the "original" dwellinghouse, it is clear that for the purposes of A.1 and (ja) the *"total enlargement"* is the proposed shed in addition to the older garage. Consequently, that total enlargement must not exceed any of the limits set out in sub-paragraphs (e) to (j). I turn to this next.

10. Limitation A.1 and (j)(iii) states: *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, and would –
    (iii) have a width greater than half the width of the original dwellinghouse

11. Given that the width of the total enlargement (older garage extension plus shed) extends beyond the side wall of the original dwellinghouse and would be greater than half the width of the original dwellinghouse, it exceeds the limits of A.1 and (j)(iii) and hence does not meet the limitation of A.1 and (ja). Therefore, the proposed development would not be permitted development under the Order.

12. Separate to the above, the appellant states that the proposed shed would not be attached to the rear of the more recently constructed garage. However, the submitted drawings are not precise – they appear to show the two buildings joined together and, that being the case, also beyond the limitations of Class A. However, that aside, the proposal would not be permitted development in any event for the reasons I have previously set out.

Formal Decision

13. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the proposed bike and firewood shed, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Thomas Shields

INSPECTOR