



Appeal Decision

Site visit made on 6 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 OCTOBER 2022

Appeal Ref: APP/Q4245/D/22/3301761

Rose Acres, Barrow Lane, Hale, Altrincham WA15 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr & Mrs Pochin against the decision of Trafford Borough Council.
 - The application Ref 107352/PHAA/22, dated 17 February 2022, was refused by notice dated 11 May 2022.
 - The development proposed is the construction of an additional storey.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. While the description of development in the banner heading above is substantially the same as that used on the prior approval application form, I have omitted the site address as it is not descriptive of the development proposed.

Main Issue

3. The main issue is whether the proposal falls within the scope of development permitted by Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (hereafter "the GPDO").

Reasons

Background

4. Rose Acres is a substantial two-storey detached dwelling set in a large and spacious plot. It was originally built in the early 1960s as a dormer bungalow, but a two-storey extension has been built at the western end of the dwelling following the demolition of an earlier garage, pursuant to a planning permission granted in 1989. Both parts of the property have accommodation within their roof level. The appellants wish to add an additional storey to the original dormer bungalow part of the dwelling.
5. Part 1, Class AA of the GPDO allows for the enlargement of a dwellinghouse by construction of one or two additional storeys (depending on the circumstances) "*immediately above the topmost storey of the dwellinghouse*". This is subject to the exclusions and conditions described in Paragraphs AA.1. and AA.2.

6. The Council did not find that the appeal proposal was not permitted by the provisions of Paragraph AA.1., nor did it find harm in respect of any of the prior approval matters set out in Paragraph AA.2.(3)(a). It did, however, conclude that the development would not be permitted by Part 1, Class AA of the GPDO. The reason for this was set out in its officer report:

"The dwellinghouse features a lower east section with one storey and a higher west section with two storeys. The additional storey is proposed to be constructed immediately above the lower one storey east section, not immediately above the topmost two storey west section of the dwellinghouse."

7. The appellants disagree with the Council's interpretation and reasoning, and have submitted an opinion from Counsel which concludes that the proposal complies with the requirements of Class AA for the following reasons:
- i) The legislative intention of Class AA is to allow only the original house to be extended.
 - ii) The interpretation offered in i) is supported by the limitation in Paragraph AA.1(d), which *"confirms that the baseline comparison should be made with the original dwellinghouse, excluding any extensions"*.
 - iii) It would be *"nonsensical"* to exclude the appeal proposal from Class AA, as an additional storey above the original dormer bungalow part of the dwelling would not result in the building being higher building overall.

Definitions

8. The appellants reminded me of the accepted principle that "statutory provisions are to be given their plain and ordinary meaning read in their statutory context and in light of their statutory purpose"¹. Paragraph AA.4. provides a small number of definitions specifically for the purposes of interpreting Class AA. Of greatest relevance here is that it defines the "principal part" of a dwellinghouse as *"the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition"*, and a "storey" as excluding *"any accommodation within the roof of a dwellinghouse, whether comprising part of the original dwellinghouse or created by a subsequent addition or alteration"*.
9. Development is not permitted by Class AA for a dwellinghouse constructed before 1 July 1948 or after 28 October 2018, so the phrase "original building" in this context can only mean the dwellinghouse as it was first built². "Topmost" is not defined within the GPDO but is a common word; the dictionary which I have to hand as I write this decision³ gives the definition simply as *"highest"*.

Application and Interpretation of Class AA

10. The appellants argue that Class AA is intended to allow only the original house to be extended because *"otherwise it would be possible to create a substantially larger house through incremental side and rear extensions that could then be enlarged through reliance on Class AA"*. However, there is

¹ *Pinner v. Everett* [1969] 1 WLR 1266

² Article 2(1) of the GPDO

³ *Oxford Paperback Dictionary* Third Edition (1988): Oxford University Press

nothing within either the GPDO itself or the Order which introduced Class AA⁴ (including the Explanatory Notes) to substantively support the interpretation that Class AA permitted development rights only apply to the original building. Other Parts and Classes of the GPDO impose various limitations and restrictions on permitted development with reference to the narrow definition of “original building” set out in Article 2(1); given this it is very likely that if Class AA had been intended to apply only to the “original building” it would clearly have said as much in the legislation. (Although the point is not central to determining this appeal, it would therefore be at least theoretically possible to extend a dwelling by the incremental route suggested, although of course the restrictions set out in AA.1. and the need for the local planning authority to grant prior approval would be likely to be a practical limitation in many instances.)

11. Instead, AA.1.(i) allows an additional storey to be built only on the “principal part” of a dwellinghouse, from which (as we have seen) extensions of a lower height than the main part are specifically excluded. Again, if higher extensions were intended to be excluded from the “principal part” of the dwellinghouse, it seems likely that the term would have been defined as such (as has been done in respect of lower extensions). In the case of the appeal property, the post-1989 extension is higher than the original bungalow and is not therefore excluded from the definition of “principal part”. I saw on my site visit that it is visually and spatially integrated with the original dormer bungalow, and together they form the “main part” of the dwellinghouse. While not part of the “original building”, in my view it is therefore correct in this case to consider the post-1989 extension as being part of the “principal part” of the building.
12. Paragraph AA.1.(d) states that development is not permitted by Class AA “if the existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, whether in reliance on the permission granted by Class AA or otherwise. The Council’s officer report states that the development would comply with this limitation:

“The two-storey side extension with gable end roof space accommodation is understood to have replaced an earlier garage structure in this location. This extension does not represent an additional storey above the footprint of the original dwelling house”.
13. Based on the evidence before me I agree with that assessment; the post-1989 extension is a side extension rather than an upwards expansion of the original building. However, that the Council has correctly excluded the side extension from its interpretation of the “original dwellinghouse” does not support the appellants’ much broader conclusion, set out in the opinion of Counsel, that *“the focus of this permitted development right is plainly on additions to the original house rather than to any extensions”*. While AA.1.(d) does indeed focus on the original dwellinghouse, it is the only limiting criterion within Paragraph AA.1. which does so; the other criteria address different matters which are not related to assessing or understanding the “original building”.
14. The opinion of Counsel goes on to acknowledge that *“there is no express exclusion of the permitted development right where a side extension is higher than the original building”* and suggests that *“on the Council’s approach the construction of up to two additional storeys above the side extension could be*

⁴ The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 (SI 2020 No. 755)

permitted". Both of those conclusions could be reasonably drawn from the evidence before me (although as any alternative proposal would need to be assessed against the "prior approval" matters it would not be appropriate for me to comment further). In any case though, the fact that certain other schemes could be permitted by the legislation does not add weight in support of the particular proposal now before me.

Findings

15. Drawing all the above points together, it will be evident that I do not agree with the principal arguments advanced by the appellants as to how Class AA should be interpreted in this case. Instead, for the following reasons, my decision in this appeal comes back to applying the commonly understood definition of topmost which I have set out in paragraph 9 above.
16. The appeal property has an original single-storey part and a more recent two-storey extension; there is also accommodation within the roof spaces, but for Class AA these are not counted as storeys. It is therefore a two-storey building, and indeed is described as such by the appellants.
17. As the post-1989 extension is taller than the original building, it is not excluded from being considered as part of the "principal part" of the dwellinghouse as defined in Class AA. As a matter of fact, and degree I find it appropriate to treat it as such in this case.
18. The only limitation of Class AA which specifically relates to the original building is that development is not permitted if the existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, and that is not the case here.
19. Class AA permits the construction of an additional storey (or storeys) "immediately above the topmost storey of the dwellinghouse"; not above "any storey", or above "the topmost storey of any part of the dwellinghouse". By the plain and ordinary definition of topmost as "highest", here this must mean above the first-floor level. However, the proposed extension would be immediately above the ground floor level, which is not the topmost storey of the dwellinghouse, and so it is not permitted by Class AA. Although the additional storey proposed would not result in the enlarged building as a whole being any higher than at present, that is not one of the criteria against which Class AA proposals are assessed, so it is not a consideration which can carry significant weight in favour of the appeal scheme.
20. I therefore conclude that the proposed development does not fall within the scope of development permitted by Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Conclusion

21. For the reasons set out above, I conclude that the appeal should be dismissed.

M Cryan

Inspector