The Planning Inspectorate

Appeal Decision

Site visit made on 27 September 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/L3245/X/22/3300401
Curlew Cottage, Rowe Lane, Stanton long, Much Wenlock TF13 6LS

- 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 David Smith against the decision of Shropshire Council.
- The application ref 22/01033/CPL, dated 2 March 2022, was refused by notice dated 12 May 2022.
- 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 the erection of a single storey garden room extension to the rear of the property on SE elevation.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the Council's decision to refuse to grant a LDC was well-founded.

Preliminary Matter

3. I have taken the description of development from the application form. Within the description, the appellant included details of the materials, the size of the extension and distance from the property boundary and how it would be accessed. Since these are not acts of development, I have not included them in the description above.

Reasons

4. An application under S192(1)(b) of the Act[1] seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

5. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

[1] Town and Country Planning Act 1990 (as amended)

6. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired of for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.

7. Curlew Cottage is one half of a pair of semi-detached houses, which are stated to be approximately 250 years old with the adjoining property, 15 Rowe Lane originally built at right angles to the appeal property. The appellant proposes to extend the property on the south-east elevation to create a single storey garden room, comprising dwarf brick/stone wall with glazed upper walls and timber framework to match materials used in construction of the existing dwelling.

8. The main thrust of the appellant's case is that the proposed development is granted planning permission by virtue of Part 1, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). Class A permits the enlargement, improvement or other alteration of a dwellinghouse subject to specified limitations and conditions.

9. Under paragraph A.1(e)(i) development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall which (i) forms the principal elevation of the original dwellinghouse. For the purposes of the GPDO "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. Whether the proposed development would comply with the limitations of the GPDO, and therefore be lawful development, will turn on whether the principal elevation of the original dwellinghouse is the south-east elevation or not. It is not disputed that the proposal would meet other limitations set out in the GPDO.

10. The Permitted development rights for householders: Technical Guidance (2019) defines the 'Principal elevation' in most cases as that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

11. During my visit, I saw that the elevation which fronts onto Rowe Lane, the north-west elevation, has a door, with windows either side. Although the south-east elevation faces away from Rowe Lane, it has features which are typical of a principal elevation, including a door, and windows either side on the ground floor and first floor. However, as confirmed by the Inspector in appeal decision APP/L3245/X/21/3283108, there can only be one principal elevation.

12. The appellant states that in 1986, an external door and three windows were added as part of an extension to the property, which has resulted in the entire focus and working orientation of the property shifting to the north-west elevation. While the changes made may have changed how the building now looks and functions, as set out above, what is relevant is the principal elevation of the "original" dwellinghouse.

13. The Council has provided 'Existing Elevations and Floor Plans BR/86/0280, which I shall refer to as 'the 1986 plans'. The south-east elevation is described on the 1986 plans as the 'Front Elevation' and the north-west elevation is described as the 'Rear Elevation'. The Front Elevation is shown with a door which provides access into the dwelling, with windows either side and windows at first floor level. This is consistent with what I saw on site and while the windows which are currently in situ may be replacements, I consider these to be the main architectural features of the building.

14. The Rear Elevation is shown on the 1986 plans with two stores, each with their own access but no direct access into the habitable space of the main dwelling. The stores are both single storey structures which appear subordinate to the main dwelling. The Council has provided me with a historic map dated 1901-1902 which shows what appears to be the appeal building with two additions to the elevation fronting onto Rowe Lane, which appear consistent with the two stores shown in the 1986 plans. It therefore seems likely that the 1986 plans are reflective of the original dwellinghouse.

15. Given the limited architectural features on the Rear Elevation (north-west elevation) and its subordinate function in respect of the dwelling, despite its orientation towards the highway, it is not the principal elevation of the original dwellinghouse. The Front Elevation (south-east elevation) by contrast, despite its orientation away from the highway, contains the main architectural features of the building and functions as the main entrance to the original dwellinghouse and is, in my view, the principal elevation for the purposes of applying the GPDO.

16. The appellant has drawn my attention to changes made to 15 Rowe Lane. While I saw that No 15 has been extended, the Council advise that planning permission was granted at the site, reference 10/05457/FUL. An application for planning permission can consider the merits of the proposal, whereas an application for a lawful development certificate under S192 of the Act can only consider whether the development would be lawful. The alterations to No 15 are therefore not comparable to the appeal before me.

17. Thus, for the reasons given above, I consider, as a matter of fact and degree, the principal elevation of the original dwellinghouse is the south-east elevation. The proposed extension would therefore extend beyond a wall which forms the principal elevation of the original dwellinghouse and is not permitted by the GPDO. Consequently, planning permission is required.

Conclusion

18. 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 garden room extension to the rear of the property on the south-east elevation 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.

M Savage

INSPECTOR