



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/P1805/X/22/3299524

34 Linthurst Road, Burnt Green, Bromsgrove B60 1QH

- 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 Bill Singh against the decision of Bromsgrove District Council.
- The application ref 21/01265/CPL, dated 30 July 2021, was refused by notice dated 5 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 an LDC is sought is a single storey rear kitchen extension.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the council is provided with information satisfying it 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. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
5. The drawings which relate to the application are Plan No. PL200 Proposed Floor Plan and Block Plan dated June 2021 and Plan No. PL201 Proposed Elevations dated June 2021.

Main Issue

6. This is whether the council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 of the Order. It includes at Part 1, Class A, the enlargement, improvement or other alteration of a dwellinghouse. This is subject to the limitations set out in paragraphs A.1 and A.2 and the conditions in paragraph A.3.
8. The development for which an LDC is sought is a single storey rear kitchen extension. The council describes the development as having a flat roof, bi-fold doors, fixed glazing panels and an insulated solid panel between the east flank wall of the dining room and the proposed extension. There would be small gap between the dining room and the extension of approximately 3cm.
9. It is the council's view that the proposed extension would not constitute permitted development under Class A of the GPDO. This is because the dwellinghouse is on article 2(3) land¹ and the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse², thereby it would not be permitted by virtue of Class A.2(b). The appellant argues that because the proposed extension would not be joined to the existing side elevation of the dwellinghouse, it would not be caught by this limitation. This, they suggest, would mean that the extension would fall within the parameters of development permitted by Class A of the GPDO.
10. The Technical Guidance³ published by the Ministry of Housing, Communities and Local Government (2019) ("Technical Guidance") assists in interpreting householder permitted development rights set out in the GPDO. While the Technical Guidance is not a definitive statement of the law, it has been produced by the Government to assist in the interpretation of its regulations and therefore I afford it considerable weight. It explains 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. Houses will often have more than two side elevation walls and the Technical Guidance provides example diagrams⁴ to clarify this position.
11. Where an extension fills the area between a side elevation and a rear wall, the restrictions within the GPDO on extensions beyond rear walls and side walls will both apply⁵. While the proposed extension would not be attached to the side elevation of the original dwellinghouse, the wording of the GPDO states that development is not permitted by Class A.2(b) if it would *extend beyond* (my emphasis) a wall forming a side elevation of the original dwellinghouse.
12. The Technical Guidance shows that an enlargement can extend beyond a wall without it being physically attached to that wall. An example is provided on page 24 of an extension on a side wall that extends beyond a rear wall. The diagram shows that the extension does not need to be attached to the rear wall of the original dwellinghouse to be considered a rear extension. Although not illustrated within the Technical Guidance, it would be a common sense approach to consider that this would apply similarly if the extension was

¹ Designated land (Article 2(3)) includes national parks and the Broads, Areas of Outstanding Natural Beauty, conservation areas and World Heritage Sites.

² "Original" - means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date (Technical Guidance, MHCLG 2019)

³ Permitted development rights for householders

⁴ Page 22 of the Technical Guidance

⁵ Page 23 of the Technical Guidance

attached to the rear elevation of the original dwellinghouse but not the side, as in these circumstances.

13. For the above reasons, I consider that the single storey rear kitchen extension would not be permitted by Class A.2(b), Part 1 of Schedule 2 of the GPDO and express planning permission would be required.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

SA Hanson

INSPECTOR