
Appeal Decision

Site visit made on 21 December 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 03 January 2023

Appeal Ref: APP/B3030/X/22/3301859 26 The Lawns, Collingham NG23 7NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Raymond Bentley against the decision of Newark & Sherwood District Council.
- The application Ref 22/00368/LDC, dated 21 February 2022, was refused by notice dated 30 March 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 removal of existing timber & glass upper section of kitchen porch, & replace with block-work and glass upper section including solid roof.

Summary Decision: The appeal is dismissed.

Main Issues

1. The principal question arising is whether the proposed works are those of enlargement of the dwellinghouse, or of improvement or alteration. The reason for this is that, if the dwellinghouse is to be enlarged, the development would not amount to permitted development, because the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse. However, the appellant seeks to demonstrate that the proposal does not amount to an enlargement: deciding that question is the main issue in the appeal.
2. It is also necessary for any permitted development to comply with any conditions imposed by the relevant Class of the Town and Country (General Permitted Development) (England) Order 2015 ('the 2015 Order'), and whether the proposal shows that it does so is a secondary issue for my consideration.

Reasons

Background

3. The burden of proof in any application for a certificate of lawful development lies upon the applicant to demonstrate, on the balance of probability, that the proposed development would have been lawful if begun at the time the application was made. The application should be precise and unambiguous as to what is sought to be certified as lawful, because any certificate granted should be clear and precise. The planning merits of the proposal do not fall for consideration.

4. Article 3 of and Schedule 2 to the 2015 Order confer certain permitted development rights. By Class A of Part 1, the enlargement, improvement or other alteration of a dwellinghouse is permitted. However, paragraph A.1 of that Class sets out circumstances where development is not permitted by the Class, including at paragraph (e) where the enlarged part of the dwellinghouse would extend beyond a wall which either forms the principal elevation of the original dwellinghouse or fronts a highway and forms a side elevation of the original dwellinghouse.
5. I have not seen plans of the original dwellinghouse (defined elsewhere in the 2015 Order, generally to mean the house as first constructed or as it stood before 1948, if older) or of extensions that were permitted in 1978 and 1984. I understand that a conservatory, permitted in 1984, has been built and forms the footprint of the existing proposal. That conservatory was evidently to the side of the dwelling and that side of the dwelling fronts the highway.
6. Thus, although the footprint of the proposal is already established by previous development, if the proposal amounts to an enlargement of the dwellinghouse it will nonetheless offend paragraph A.1 (e).

Character of the proposed works

7. The Council have approached the question by considering the works to constitute the demolition of the existing conservatory (also referred to as a porch) and its replacement by the proposed structure. Hence, they consider the entirety of the resulting structure to amount to an extension of the dwelling.
8. Having regard to the nature of the works proposed, although I have not found the application plans particularly easy to understand, this is not what is in fact sought by the application and plans. The application seeks to demolish the top (approximately) half of the existing conservatory only. The existing brick-built lower half would largely remain intact. The proposal would replace the existing upper glazed areas with blockwork and windows, and would install a new insulated flat roof. It would move the position of the door, so resulting in some limited demolition of the lower brickwork in order to achieve that. The relevant elevation of the existing door is not shown on any plan of the proposed works, so it is unclear what materials would replace it, according to the plans.
9. Nonetheless overall, although the changes would be quite extensive, I do not consider that they amount to the demolition of the existing extension and the construction of a new one but would amount, as is contended for by the appellant, to works of alteration on the existing footprint.

Whether an enlargement

10. Again, I have not found the application plans particularly easy to understand. The Council's report refers, as does the appellant, to the width of the structure as 4.5m and its depth as 1.76m. The proposed height is reported by the Council to be 2.1m.
11. The existing structure has a slightly sloping roof away from the main dwelling. It is shown on an annotated photograph as being 2.1m high at the point furthest from the main dwelling, although measured not from the ground level but from the top of a darker brick course above ground level but below the entrance door.

12. The plan of the proposed structure (plan 26/005) is annotated to say its height, which is to constitute a flat insulated roof rather than the existing sloped glazing, is to be 2.2m. Again this is not from ground level but from a level marked 'FFL' (perhaps meaning finished floor level) which I take to be commensurate with the top of the darker brick course.
13. The plan is evidently not to scale, because when measured against the 4.5m width (assuming that is accurately depicted) the actual height shown on the plan is some 2.5m. The internal height is said to be 1.95m but is also depicted as being 85% of the external height of 2.2m, which is inaccurate. No plan of the elevation set against the main dwelling has been provided, meaning I am unable to ascertain from the plans the relationship of the proposed flat roof with the existing eaves or side wall.
14. Having regard to all these uncertainties, I am unable to conclude that the proposal would not, on the balance of probability, result in an enlargement to the dwellinghouse. It appears that the external height would increase by 10cm or more at the point furthest away from the dwelling. Although conscious that the purpose of the works is to achieve better insulation, and conscious too that the Departmental guidance (MHCLG, *Permitted Development Rights for Householders: Technical Guidance*, 2019) advises that solid wall insulation constitutes an improvement rather than an enlargement, it appears to me that the resulting structure will be moderately larger than the existing by reason of an increase in its height.
15. Therefore I cannot conclude, on the balance of probability, that the proposal would not result in an enlargement to the dwellinghouse where the enlarged part would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse. Accordingly I cannot be satisfied that permitted development rights would apply to the proposal.
16. Works have been carried out on site which may or may not amount to works commensurate with the proposed plans. I saw that the height of the structure extends some way into the roof slope, unlike the former conservatory, and thus it is materially taller and constitutes an enlargement.

Paragraph A.3: Conditions

17. The Council's report on the application records that the proposal would be constructed in materials to match the host dwelling. However, from the plans and description supplied I do not consider this to be the case. Equally upon visiting the site I saw that the structure as constructed does not match the host dwelling in the appearance of its materials.
18. Paragraph A.3 provides that any development permitted by Class A is subject to conditions including that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
19. The plans, where elevations are shown, (again plan 26/005) depict 'new blockwork' atop the existing brickwork, except where openings are to be created. The existing dwellinghouse is constructed principally of brick, not blockwork.

20. Although the condition provides an exception to the need for matching materials in the construction of a conservatory, what is proposed here would remove most of the present glazing and replace it with solid walls and roof. Differing from the plans, the exterior of the extension has now been fully rendered. Either way, the works would change the nature of the structure from what was a conservatory, so that description of it would no longer be apt.
21. Therefore the requirement to achieve materials of a similar appearance applies, and this is not proposed here (and nor has it been achieved by what has actually taken place). Therefore the construction fails to comply with the condition imposed by paragraph A.3(a).

Conclusion

22. For the reasons given above, although for reasons somewhat different from those given by the Council, I conclude that the Council's refusal to grant a certificate of lawful use of development in respect of the removal of existing timber & glass upper section of kitchen porch, & replace with block-work and glass upper section including solid roof at 26 The Lawns, Collingham NG23 7NT 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.

Formal Decision

23. The appeal is dismissed.

Laura Renaudon

INSPECTOR