



Appeal Decision

Site visit made on 21 December 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2023

Appeal Ref: APP/M1520/X/21/3283092

34 Greenwood Avenue, South Benfleet, Essex SS7 1LD

- 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 [hereafter referred to as "LDC"].
 - The appeal is made by Mrs Laura Bailey against the decision of Castle Point Borough Council.
 - The application Ref 21/0400/CLP, dated 21 April 2021 was refused by notice dated 17 June 2021.
 - 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 '*proposed ground floor rear extension*'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The reasons why the Council consider that the proposed development would fall outside a householder's permitted development are two-fold; firstly, that the height of the proposed single-storey rear extension would exceed 4m in height, and, secondly, that the extension, in being within 2m of the property's side boundary, would have an eaves height exceeding 3m.
3. With reference to the corresponding provisos in Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (GPDO) the wording of the Reason for Refusal in the Decision Notice is a typographical muddle. Instead, the relevant provisos are A.1(f)(ii) and A.1(i). In the circumstances, as I must reach my decision in accordance with the correct legislation, it falls on me to remedy the error made.

Main Issue

4. The main issue is whether the Council's decision not to issue a LDC was well founded.

Reasons

5. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 21 April 2021. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The

determination is to be made against the GPDO as subsisted at the time of the application.

6. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me and also the observations at my site visit.
7. The source of contention between the two main parties in this appeal is the height of the proposed extension and where on the ground the measurement should be taken from. At my site visit I noted that the land sloped upwards slightly, eastwards, and the existing rear wall from which the proposed extension would project, rises, accordingly. Abutting the rear wall is an area of patio.
8. The submitted drawings are annotated to show that the proposed extension's eaves would be to a height of 3m, and the pitched roof which rises from this point would add a further height of 1m at the point reached on the rear wall.
9. With reference to the GPDO's Technical Guidance 'ground level', for the purposes of invoking the legislative entitlement, is the surface of the ground immediately adjacent to the building in question. In instances where the ground level is not uniform, such as where the land is sloping (as is the case here) the ground level should be taken from the highest part of the surface of the ground next to the building. In this particular instance the correct point would be the ground level adjacent to the two-storey rearward projection which the single-storey extension would abut.
10. As a point of reference the dwelling's rear wall shows two distinct sections; the lower brick-faced section which finishes some 8 brick courses above the ground floor kitchen window, and an upper rendered section. Taking this into account, and the fact the development would realistically involve the removal of the patio, I must agree with the Council that the height measurement to eaves level, as depicted on the drawing, would be approximately 3.9m rather than the 3m indicated by the annotation.
11. The annotations of '3000' and '4000' do not correspond, as the drawing (proposed) suggests. If only 3m, and differentiating between the brick faced and rendered sections, the eaves would clearly be set at a significantly lower point on the elevation than the drawing shows. In other words the elevational drawings (both existing and proposed) are not a true representation of the dwellinghouse.
12. Given also that the enlarged part of the dwellinghouse would be within 2m of the property's side boundary, and the height of the extension's eaves would exceed 3m, the development would be contrary to the limitations of Class A, A.1(i). Further, as the pitched roof would add an additional 1m to the height the single-storey extension, it would exceed 4m in height, and therefore the proposal would also conflict with proviso A.1(f)(ii).
13. Accordingly, the proposal falls outside the parameters of Class A and it would therefore require the benefit of planning permission.

14. For the reasons given I conclude, on the evidence available, that the Council's refusal to grant a LDC was well founded, and the appeal does not succeed. I shall exercise my powers under section 195(3) of the 1990 Act as amended.

Timothy C King

INSPECTOR