



Appeal Decisions

Site visit made on 20 February 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal A Ref: APP/M0655/W/22/3294194

213 Higher Lane, Lymm, Warrington WA13 0RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr & Mrs M Stevenson against Warrington Borough Council.
 - The application Ref 2020/37464, is dated 23 July 2020.
 - The development proposed is the erection of a single storey glass roof to the West elevation of the property.
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Appeal B Ref: APP/M0655/X/22/3299177

213 Higher Lane, Lymm, Warrington WA13 0RN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Stevenson against Warrington Borough Council.
 - The application ref 2022/40999 is dated 15 February 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 free standing canopy within the residential curtilage.
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Decision on Appeal A

1. The appeal is allowed and planning permission is granted for the erection of a single storey glass roof to the West elevation of the property at 213 Higher Lane, Lymm, Warrington WA13 0RN in accordance with the terms of the application, Ref 2020/37464, dated 23 July 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 33820-01, 33820-02, 33820-03 and 33820-04.

Decision on Appeal B

2. The appeal is dismissed.

Application for costs

3. Applications for costs were made by Mr & Mrs M Stevenson against Warrington Borough Council in respect of Appeal A and Mr Mark Stevenson against

Warrington Borough Council in respect of Appeal B. These applications are the subject of separate Decisions.

Appeal A

Background and Main Issue

4. The appeal follows the Council's failure to determine the respective planning application. During the course of the Council's consideration of the planning application, they made a request to the appellant to provide a planning history of the appeal property. The Council confirm that had they retained jurisdiction to determine the planning application they would possibly have refused permission in the absence of this requested information. Based on the evidence before me, including correspondence between the parties during the consideration of the planning application, I consider the main issue to be whether the proposal is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

Inappropriate Development

5. The Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Paragraph 149 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. One exception to this is the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building.
6. The appeal property is a substantial, two-storey dwelling situated within large grounds to the front, sides and rear. The appellant provides an extensive history of approved planning permissions at the appeal property from between 1979 and 2008 including various extensions to the dwelling. However, with the exception of the planning permission for the erection of a single storey rear extension granted in 2007¹ there does not appear to be any plans available from the appellant nor the Council for these approved developments. Consequently, from the evidence available, it is not possible to ascertain with certainty as to what the original building was for the purposes of Paragraph 149 of the Framework. However, the burden of proof is based on 'the balance of probability', having regard to the evidence available, not 'beyond all reasonable doubt'.
7. Notwithstanding the limited details of the historical planning permissions, there is no indication as to whether all the permissions were in fact implemented. During my site visit, it was evident that the dwelling has had some additions, most notably a single-storey rear extension of a contemporary design. However, it was not possible to distinguish what comprised the original dwelling as it was in 1948. Nevertheless, on the limited evidence before me, the original dwelling would have been substantial in size.
8. The proposal would be attached to the western elevation of the dwelling and would be open on three sides with four posts supporting a mono-pitched, glazed roof. Read in isolation, the proposal would be large at 7m long and 4m wide. However, read in the context of the substantial size of the dwelling,

¹ Council reference: 2007/11756

particularly on this long elevation, the proposal would be a sympathetic, subordinate addition. Its prominence would be further reduced due to its light-weight construction, open sides and glazed roof.

9. Consequently, based on the evidence before me, on the balance of probabilities, the original dwelling would have been substantial and I find the proposal would not result in disproportionate additions over and above the size of the original building. Therefore, the proposal satisfies the exception set out in paragraph 149 of the Framework and therefore is not considered to be inappropriate development in the Green Belt. I would also comply with Policies CS1, CS5, QE6 and QE7 of the Local Plan Core Strategy 2014, which seek to ensure development is sustainable and protects the Green Belt, the environment and amenity.

Conditions

10. The Council have not suggested any conditions be imposed in the event I allow the appeal. Based on the evidence before me, including the detailed plans that include the colour of the development, I am satisfied that in the interests of clarity, the only condition necessary in addition to the standard time limit for commencement is a condition identifying the approved plans.

Conclusion on Appeal A

11. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other material considerations, the appeal is allowed.

Appeal B

Main Issue

12. The appeal follows the Council's failure to determine the respective application for a certificate of lawful development. The Council has confirmed that had they retained jurisdiction to determine the application they would have refused it on the basis that the proposal would not be permitted development. The main issue is whether, had the authority refused the application, their refusal would have been well-founded.

Reasons

13. The proposal is for a development similar in size and form to the development that is the subject of Appeal A, except that it would be detached from the dwelling to form a free-standing building.
14. Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) permits the provision within the curtilage of a dwellinghouse of any building, amongst other things, subject to a number of limitations. One such limitation set out at paragraph E.1(f) of Class E states such development is not permitted if 'the height of the building, enclosure or container would exceed...the height of the eaves of the building would exceed 2.5 metres'.
15. The Ministry of Housing, Communities and Local Government's 'Permitted development rights for householders' Technical Guidance 2019 (the Technical Guidance) sets out how the height of the eaves is measured from ground level

at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope².

16. The plans submitted with the application indicate the maximum height of the proposed building would be 3m, measured from the ground level. There is no annotated height of the eaves on the plans. There is a measurement of 2318mm shown on the western elevation of the proposal, although this does not extend to the point where that wall would meet the upper surface of the roof slope. Taking a scaled measurement from the plans, the Council confirm the height of the eaves, when measured in accordance with the Technical Guidance, would be 2.63m. The appellant has not disputed this measurement. Therefore, on the balance of probabilities, the eaves would exceed the permitted height of 2.5m as set out in Class E.1(f).

Conclusion on Appeal B

17. I therefore find the proposal fails to meet the requirements of Class E of the GPDO and therefore would not be permitted development.

Conclusion

18. For these reasons, I conclude that had the Council refused the application for an LDC their refusal would have been well-founded. Appeal B must, therefore, be dismissed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions

Appeal A

19. The appeal is allowed.

Appeal B

20. The appeal is dismissed.

Alexander Walker

INSPECTOR

² Page 12