



Appeal Decision

Site visit made on 2 March 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/J1915/D/21/3286650

22 Willowmead, Hertford SG14 2AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Michael West against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/1473/ASDPN, dated 26 May 2021, was refused by notice dated 14 October 2021.
 - The development proposed is to construct an additional storey using traditional materials and methods.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the course of the appeal the Court of Appeal judgment in the *CAB Housing Ltd*¹ case was issued, which relates to the interpretation of Class AA. The main parties been able to comment on the relevance of this judgment to the appeal and I have had regard to the responses received.

Background and Main Issues

3. Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits development involving the enlargement of a dwellinghouse by construction of additional storeys, subject to specified limitations and conditions.
4. The Council issued three reasons for refusal. The first is that the proposal would not meet the limitation at AA.1.(i) which does not permit an additional storey to be constructed other than on the principal part of the dwellinghouse.
5. The second reason is that the appellant has failed to demonstrate that the proposal would comply with the limitation at AA.1.(k) which restricts development that includes any engineering operations other than works within the curtilage of the dwellinghouse to strengthen its existing walls or existing foundations.
6. Finally, the Council cites conflict with the prior approval matter at Condition AA.2.(3)(a)(ii) relating to the external appearance of the dwelling house.

¹ CAB Housing Ltd v SSLUHC and Broxbourne BC [2023] EWCA Civ 194

7. The main issues, therefore, are whether the proposal amounts to permitted development, with particular reference to the limitations at AA.1.(i) and AA.1(k), and if so, whether prior approval should be given, having particular regard to the resulting external appearance of the dwellinghouse.

Reasons

Whether permitted development – Condition AA.1.(i)

8. The appeal relates to a semi-detached dwelling within a purpose built housing estate. Condition AA.1.(i) precludes an additional storey where it is constructed other than on the principal part of the dwellinghouse.
9. Both dwellings in the pair – Nos 22 and 23 – have rear two storey extensions. The Council states that these are later additions granted planning permission in 2007, under reference 3/07/0616/FP. The appellant contends that the whole of the building, including the extension, forms the principal part of the dwellinghouse. I am not provided with full details of the planning permission referred to by the Council, although the identification of a specific planning permission number does lend credence to the Council's position.
10. However, for the purposes of Class AA, sub-section AA.4. defines "principal part", in relation to a dwellinghouse, as the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition. Therefore, whether the rear extension is original or not is not decisive, the relevant consideration being whether it is of a lower height.
11. In this case, I saw on site that the rear extension has a visibly lower ridge line than the front part of the building, which is consistent with the plans submitted. Consequently, I find that the rear extension does not form part of the principal part of the dwellinghouse as defined under sub-section AA.4, and the proposal, which would extend the building upwards by one storey above the rear extension, would conflict with the requirements of Condition AA.1.(i). Therefore, the proposal would not amount to permitted development under Class AA.

Other limitations and prior approval matters

12. As a consequence of my findings above, it is not necessary for me to go on to consider whether the proposal would be permitted development under Paragraph AA.1.(k) or whether it would meet the requirements of the prior approval matter of external appearance as, even if they were met, this would not alter the overall outcome of the appeal.

Conclusion

13. For the reasons given, I conclude that the proposal is not permitted development under Schedule 2, Part 1, Class AA of the GPDO. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR