



Appeal Decision

Site visit made on 9 May 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/V1505/X/22/3296375

22 Clickett End, Basildon, SS14 1NG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ('the Act') against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Nelu Voin against the decision of Basildon Borough Council.
 - The application ref 22/00083/LDCP, dated 24 January 2022, was refused by notice dated 23 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 a rear extension on a terrace house up to 6 metres in depth and not exceed the height of 4 metres.
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Decision

1. The appeal is dismissed.

Main Issue

2. Section 192(2) of the Act indicates that if, on application under that section, the local planning authority are provided with information satisfying them 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 planning merits of the proposed development are not relevant in this appeal and therefore the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The proposed development is described as a rear extension up to 6 metres in depth and with a height not exceeding 4 metres. The appeal site consists of a mid-terrace two-storey property forming part of a wider terrace whereby the dwellings have a staggered arrangement.
4. Lawfulness is claimed on the basis that the operation was granted planning permission by reason of the provisions of the Act, in particular, it is argued that the proposed development would come within the allowances of the enlargement of dwellinghouses set out in Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the Order').

5. Under Class A, Part 1, Schedule 2 of the Order, planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions. The limitation at A.1(f) sets out that-

development is not permitted by Class A if-

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and-

(i) extend beyond the rear wall of the original dwellinghouse by more than four metres in the case of a detached dwellinghouse, or three metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height.

6. The submitted drawings show the existing property measures a depth of some 6700mm from its front to rear elevations. Taking the measurements from the submitted drawings, the proposed development would increase this measurement to 10000mm, therefore resulting in an addition of some 3300mm. Although the proposed development would include an internal room measurement of 3 metres, the measurement of the extension beyond the rear wall should be made from the base of the rear wall of the original house to the outer edge of the wall of the extension. As such, the proposed development would project beyond 3 metres from the back wall of the house and therefore this dimension fails to come within the allowance for the enlargement of dwellinghouses as set out in paragraph (f).
7. It is the appellant's case that an extension of upto 6 metres is allowable. A single storey extension to a house which is not on article 2(3) land or on a site of special scientific interest can be larger than allowed under paragraph (f) above, but it must not extend beyond the rear of the original house by more than six metres in the case of a terraced property. In addition, the total height of the extension must not be more than 4 metres.
8. These larger single storey extensions, extending beyond the rear of the original house by more than 3 metres and less than 6 metres in the case of a terraced dwelling, are subject to a prior approval process to assess the impact of the proposed development on the amenity of their property.
9. Under the prior approval process, householders wishing to build a larger extension have to notify the local planning authority about the proposed extension and it is for the local planning authority to give adjoining neighbours notice of the proposal and the opportunity to object. Works cannot commence until the local planning authority notifies the householder that no prior approval is required, or gives prior approval, or 42 days have passed without any decision by the local planning authority. The requirements of the prior approval process are set out in paragraph A.4 of Class A. Whilst the appellant states that neighbouring occupiers have 'no problem with building this extension', this does not provide the requisite neighbour consultation notification required as part of the prior approval process nor satisfy the clear requirements of paragraph A.4.
10. Single storey extensions that do not extend beyond the rear of the original house by more than 3 metres in the case of a terrace dwelling, (as set out in paragraph (f) above) are not subject to the prior approval process nor does it involve neighbour consultation.

11. In this instance, the appellant made an application to the local planning authority for a LDC rather than an application for prior approval. The proposal could have been considered under the prior approval procedure, with Council notification, but it wasn't dealt with that way, so I am unable to consider lawfulness under paragraph (g). As the proposed development does not benefit from the limitation of A.1(g), it therefore stands to be assessed against the restriction of A.1(f). Given that the proposed single storey extension would extend beyond the rear wall of the original dwellinghouse by more than 3 metres, it would not fulfil the criteria set out in Class A, Part 1, Schedule 2.
12. On the balance of probabilities, and considering the preclusions stated in paragraph A.1 of Class A, Part 1, Schedule 2 of the Order, the proposed single storey rear extension cannot be considered as development permitted under the Order.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of a rear extension on a terrace house up to 6 metres in depth and not exceeding the height of 4 metres, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Brownless

INSPECTOR