



Appeal Decision

Site visit made on 27 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/U1430/X/22/3298450

Forest Lodge, Hooks Beach, Vinehall Street, Whatlington, Battle TN33 0NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Jamie Pearson against the decision of Rother District Council.
- The application ref RR/2022/132/O, dated 8 January 2022, was refused by notice dated 8 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 part 2 storey, timber framed "granny" annex to the existing garage, with dormer to front. Waste water drained to existing private system, rain water to soakaway

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application the subject of this appeal was made on the basis that the development is in the curtilage of an existing residential property and would be a reasonable development to enhance the use of the existing property to be occupied by pensioner parents. The application was to extend the existing garage to provide living accommodation comprising of a kitchen/lounge area, WC, shower room, bedroom, utility, cloak room and loft room with ensuite bathroom. Part floor plans and elevations have been provided which indicate that the garage roof would be partially demolished and rebuilt.
3. The Council refused the application on the basis that the proposed development would not be lawful under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) as it would not be built for purposes incidental to the enjoyment of the dwellinghouse, and therefore planning permission is required.
4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The planning merits of the proposal, such as the need for the annex, the presence of other annexes in the area, the limited effect on the environment, the support of local residents, are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful.

5. Class E is a permitted development right for 'buildings etc incidental to the enjoyment of a dwellinghouse'. Class E is subject to limitations set out in paragraphs E.1(a)-(k) inclusive, E.2 and E.3. Although not mentioned in the decision notice, the Council refers in its Appeal Statement to conflict with the limitation in paragraph E.3 which states that:

In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

6. Also not mentioned in the decision notice, the Council states in their Planning Officer's Report that the development would be in conflict with a condition that was imposed on the planning permission for the garage. Condition 3 of planning permission reference RR/2004/281/P states:

The garage shall be used for the parking of cars and domestic storage only.

Main Issues

7. The main issues are therefore:

- whether the annex would be for a purpose incidental to the enjoyment of the dwellinghouse;
- whether the development would comply with the limitations of Class E, Part, Schedule 2 of the GPDO;
- whether the development would be in conflict with Condition 3 of RR/2004/281/P.

Reasons

Incidental

8. In order to establish whether the annex would be for a purpose incidental to the enjoyment of the dwellinghouse as such, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse.
9. An incidental use is one which is functionally related to the primary use. It cannot therefore be one that is integral to or part and parcel of the primary use. The annex would provide primary living accommodation that would normally be part and parcel of a dwellinghouse. This is part of the primary use, rather than being incidental to it. I do not therefore find, on the balance of probabilities, that the annex is required for a purpose incidental to the enjoyment of the dwellinghouse. The annex cannot therefore be permitted development under Class E, Schedule 2, Part 1 of the GPDO. The proposed annex building would therefore require planning permission.

Limitations of Class E

10. The main dwelling faces the road at Vinehall Street (B2089) and the front elevation contains the porch and front door. I conclude that the front is the principal elevation of the dwelling. The rear of the house is opposite the principal elevation, and the other two elevations are side elevations. The

existing garage is situated on land between the side elevation of the house and the boundary of the curtilage of the dwellinghouse. The extension to the garage would also be between the side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. It therefore conflicts with the limitation in paragraph E.3 and would require planning permission.

11. Although not raised by the Council, it seems to me that the extension to the garage would also conflict with paragraph E.1(d) as it would have more than a single storey. It also appears that the extension would conflict with E.1(c) as part of the extension to the garage would appear to be situated on land forward of a wall forming the principal elevation of the original dwellinghouse, according to the plan submitted with the application. I have insufficient information regarding the height of the building in order to assess whether it would comply with the limitations in E.1(e) or E.1(f). These are further conflicts with the limitations of Class E which indicate that it requires planning permission.

Condition 3

12. While it would appear that the original garage would be largely unaffected in terms of its use for the parking of cars or domestic storage, the proposal would result in the garage as extended being used both for the parking of cars/domestic storage and for a 'granny' annex. On the balance of probabilities, I therefore conclude that the use would be in conflict with condition 3, and planning permission would be required.

Conclusion

13. For the reasons given above I conclude the Council's refusal to grant a certificate of lawful use or development in respect of part 2 storey, timber framed "granny" annex to the existing garage, with dormer to front, waste water drained to existing private system, rain water to soakaway, 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.

N Thomas

INSPECTOR