The Planning Inspectorate

Appeal Decision

Site visit made on 19 July 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/R1038/X/22/3300085
144 Chesterfield Road, Dronfield S18 1XG

- 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 (LDC).
- The appeal is made by Mr Paul Harrison against the decision of North East Derbyshire District Council.
- The application Ref 22/00117/LDC, dated 8 February 2022, was refused by notice dated 19 May 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 an outbuilding.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Lawful development certificate application 22/00117/LDC sought confirmation from the Council that a proposed single storey, ground floor extension, dormer window and an outbuilding was permitted development and hence lawful in respect of the limitations of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). The Council confirmed by means of a lawful development certificate (LDC) that the proposed single storey, ground floor extension and dormer window would have been permitted development and hence lawful had they been constructed on 8 February 2022.

3. The Council did not, however, confirm that the proposed outbuilding would have been permitted development and hence lawful on 8 February 2022. Hence, this appeal relates solely to the Council's refusal to grant an LDC for the proposed outbuilding.

Main Issue

4. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuilding are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

5. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed outbuilding was well founded with particular regard to whether it has been demonstrated that the proposal does not meet the permitted development limitations as contained within Class E of Part 1 of Schedule 2 of the Order.

Reasons

6. There is no disagreement between the main parties that the outbuilding would be used for a purpose incidental to the enjoyment of the dwellinghouse and that it would be permitted development having regard to the limitations imposed in respect of E.1 (a), (b), (d), (e), (f), (g), (h), (i), (j) and (k) of Class E of Part 1 of Schedule 2 of the Order.

7. The point of contention between the main parties relates to whether the proposed outbuilding would be permitted development by virtue of E.1 (c) of the Order which states that development is not permitted by Class E if *'any part of the building, enclosure, pool or container would be situated on land forward of a wall forming a principal elevation of the original dwellinghouse'.*

8. The Order does not define what is meant by a *'principal elevation'*. However, the Government's 2019 Permitted Development Rights for Householders - Technical Guidance (Technical Guidance) provides assistance in terms of interpreting the Order. It states *'in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation'.*

9. The appellant is of the view that the principal elevation of the dwellinghouse is that which faces directly towards Chesterfield Road, i.e., the north facing elevation. The Council's view is that the principal elevation of the dwellinghouse is the east facing elevation, i.e., that facing an existing garden. In this case, the north facing elevation of the dwellinghouse does not contain an entrance into the house and there is no evidence to indicate that any such entrance existed in terms of the original dwellinghouse.

10. I accept that there are steps from Chesterfield Road that enable pedestrian access up to the east facing elevation entrance to the property, but in considering what is the principal elevation, I find that it is necessary to consider the elevations of the dwellinghouse itself and not whether there are steps from the main road.

11. While it is the case that the north facing elevation of the dwellinghouse does front a main highway, the Technical Guidance does make it clear that it is not always the case that this would be the principal elevation. The Technical Guidance also states that the principal elevation will usually contain main architectural features such as bay windows or a porch serving the main entrance to the house. I have already identified that there is no main *'entrance'* to the house from the north facing elevation of the dwelling.

12. The entrance doorway on the east facing elevation to the property, which the appellant claims is part of the *'original'* dwellinghouse, includes a doorbell but no other door furniture. There is a further entrance doorway to a south facing elevation of the house, which the appellant says is *'original'*, and includes a doorbell, letter box and knocker. The appellant asserts that this demonstrates that the east facing elevation is not a principal elevation. On the evidence that is before me, I cannot be certain that the entrance doors are original, and, in any event, I do not find that doorbells, letter boxes and knockers are in themselves determinative matters.

13. The east elevation includes an entrance doorway leading directly into what one might describe as being an internal passage, hallway, or lobby. It also includes a ground floor bay window. The evidence, in the form of the Council's officer report, shows that the bay window included a balcony above. On my site visit, I noticed that this had recently been removed. The appellant claims that as the east facing entrance doorway is further away from the town, it cannot reasonably have been envisaged that this would be the principal elevation of the property. I do not share this view, and, in any event, the Technical Guidance does not refer to proximity to towns or main settlements in deciding what is a principal elevation.

14. There are two ground floor windows and two first floor windows that frame the entrance doorway to the east elevation. In this context, and from a pure visual point of view, I find that passers-by appreciate the east facing elevation as being the principal elevation. While I acknowledge that there are windows on the north facing elevation, there is nonetheless an absence of an entrance doorway. Furthermore, and, as a matter of fact and degree, I find that the east facing elevation includes the most architecturally rich detailing considering the provision of a bay window and the entrance doorway. In addition, the entrance doorway is framed by two windows at ground floor level and two windows at first floor level. This degree of design symmetry gives an architectural visual appreciation of a principal elevation.

15. The Council has referred to the fact that the elevation on the main road faces north and, on this basis, it should not be a principal elevation. I do not find that the orientation with the sun is a determining factor in considering this appeal. The Technical Guidance does not refer to this and, furthermore, it is not uncommon for properties with principal elevations to face north. It is, however, for the other collective reasons outlined above that I conclude, as a matter of fact and degree, that the east facing elevation is the principal elevation of the original dwellinghouse for the purpose of considering Class E of the Order.

16. In reaching the above conclusion, I note the various planning documents referred to by the appellant that pre-date the LDC application in which the east facing garden has been referred to as the *'side of'* 144 Chesterfield Road. In pure descriptive terms, it is perhaps not unsurprising that one may refer to the east facing garden as being to the *'side of'* 144 Chesterfield Road. However, that does not in itself mean that the east facing elevation is not a principal elevation for the purposes of considering whether a proposal would be permitted development by virtue of Class E of Part 1 of Schedule 2 of the Order.

17. In other words, in respect of compiling planning application addresses or undertaking planning application assessments, it is not generally the case that

detailed appraisals are carried out, as is the case here, in terms of whether such proposals are '*on land forward of a wall forming a principal elevation of the original dwellinghouse'.* Furthermore, I would add that the Technical Guidance makes it clear that *'usually, but not exclusively, the principal elevation is what is understood to be the front of the house'.* Consequently, the appellant's extracts from various planning documents do not alter or outweigh my conclusion in respect of this proposal.

Other Matters

18. The appellant raises concern that if I were to find that the east facing elevation is a principal elevation it would mean that he would have to submit planning applications for small outbuildings in his garden. I acknowledge that my decision will have implications in terms of the need to apply for planning permission for buildings in the east facing garden area. However, this is not a reason which justifies granting an LDC.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding 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.

D Hartley

INSPECTOR