



Appeal Decision

Site visit made on 8 August 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/J9497/X/23/3317339

Burl, Skaigh Lane, Belstone, Devon EX20 1RD

- 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 Miss Angela Stone against the decision of Dartmoor National Park Authority.
- The application Ref 0299/22, dated 29 June 2022, was refused by notice dated 8 September 2022.
- The application was made under section 191(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 new single storey rear extension and conversion of existing roof space.

Summary Decision: the appeal is allowed in part and a certificate granted for that part, but is otherwise dismissed.

Reasons

1. Burl is a detached bungalow in a fairly extensive garden that lies on the south side of Skaigh Lane, a narrow road that links Belstone with Sticklepath. It is set towards the northeast corner of the property, lying close to the road albeit above it. A detached outbuilding was under construction at the time of my visit, close to the western boundary of the property.
2. In essence, the Appellant's case is that extensions and alterations that she proposes to make to the property would not require a planning application to be made. The former part of the proposed development would be permitted development, as defined in Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the 'GPDO'). The position of the National Park Authority ('NPA') is that this would not be the case.
3. The main issue in the appeal is whether the NPA's decision to refuse to issue a certificate was well-founded. The determination of the appeal has to be made on the basis of the lawfulness of the proposed development. What might be described as 'planning matters', such as the effect on views, privacy, light, design and the NPA's policy on additions that would be over 30% of the original dwelling, as have been referred to in comments made by third parties and Belstone Parish Council, cannot be taken into account.
4. It is for the Appellant to make her case on the balance of probability.

5. There are two elements to the application: the erection of a single storey extension; and the conversion of the existing roof space.
6. The NPA refused to issue a certificate for reasoning related to the extension. It did not reach a defined position on the roof space element "due to the fundamental failure of the proposed extension, this element of the application [the roof space] has not been considered in detail". Notwithstanding its position on the extension, the NPA could have made an assessment of the roof space element; it is readily separable from the extension and had it found the roof space proposal to be lawful it could have issued a split decision.

The Proposed Extension

7. The proposed extension would run across the whole of the South elevation. Its footprint would, to all intents and purposes, replicate that of the present south side of the property, albeit that it would project out southwards by some 4m. It would have ridged roofs that would be lower than the existing main ridge line. It would allow for an extended living room and the creation of a third bedroom.
8. Class A allows for the "enlargement, improvement or other alteration of a dwellinghouse" subject to various criteria and conditions. The NPA contends that the extension would not accord with the wording of Class A(e) which states that development is not permitted development, and therefore an application for planning permission would need to be made, where "the enlarged part of the dwellinghouse would extend beyond a wall which— (i) forms the principal elevation of the original dwellinghouse". The NPA argues that the property's southern elevation is its principal elevation, whilst the Appellant maintains that this is the property's north elevation.
9. There is no definition of principal elevation in the GPDO. Guidance on the interpretation of, amongst others, Class A of the GPDO is given in 'Permitted development rights for householders - Technical Guidance', September 2019, (the 'Technical Guide') produced by the Ministry of Housing, Communities and Local Government. In its 'General Issues' it sets out that "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".
10. 'Burl' is reported as dating from the late 1920s. It would appear that it was originally rectangular in plan form, save for a projecting element on its south elevation. The Site Survey drawing for the 1981 permission shows a garage and parking area at the property's northwest corner, from which a gravelled path ran along the inside of the hedge bounding the property with Skaigh Lane to the top of the steps that rise from that road. From there, a gravelled area ran most of the way around the dwelling.
11. The north elevation faces Skaigh Lane, and extensions have been added to it. Of these, a single storey flat-roofed element running most of the length of the building was, according to the Appellant, in-situ on 1 July 1948. She argues, therefore, that it should be considered as being part of the original dwellinghouse for the purposes of the GPDO. The NPA does not dispute this, and I take it to be the case. This addition houses an entrance hall, the

dwelling's kitchen and bathroom. A further extension for a porch, in which the property's post box is located, was added following the grant of planning permission¹ on 5 December 1981. Architecturally, the north elevation is entirely utilitarian.

12. The dwelling's main architectural features are found on its southern elevation. This has a conspicuous gable-ended projection and two windows that have very shallow bays. It also has a doorway to the property, albeit that the previous owner used this as a garden room. This elevation provides a view to high moorland in the National Park.
13. It is not uncommon, especially in rural areas, for properties to have their most used access in the rear elevation where wet and muddy coats and boots might be hung in a porch like that at Burl. Notwithstanding that it faces the road, I find that the North elevation to be at the rear of the property.
14. Conversely, I find that the south elevation is the front of the property and, given its architectural form and access doorway, I find that, as a matter of fact and degree and on the balance of probability, it is also the principal elevation at Burl.
15. Given that this is the case, the extension on the south elevation would not be permitted development by reason of Class A, as it would project beyond the plane of the property's principal elevation. Although the description refers to the extension being to the rear elevation, and I have found this to be its front elevation, it is unnecessary to change this as part of my decision. The defining factor in the assessment is not which is the front or rear elevation, it is which is the principal elevation.

The Proposed Works to the Roof Space

16. Section 55 of the Town and Country Planning Act 1990 defines what constitutes 'development'. S55 sets out what shall not be taken to be development including, in s55(2)(a), "the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground".
17. The drawings submitted with the application show that the works that are proposed would be entirely internal, the roof would not be extended or altered, even by way of the addition of rooflights. Thus, they would not amount to development, by reason of s55. As they would not be development, so they do not require planning permission. They would be lawful, and I can issue a certificate to this extent.

Conclusions and Formal Decision

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a new single storey rear extension was well-founded and that the appeal should fail in that regard. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

¹ Application Reference 3/3/1775/1980

19. The appeal is dismissed insofar as it relates to the erection of new single storey rear extension.
20. For the reasons given above I also conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of conversion of existing roof space was not well-founded and that the appeal should succeed in that regard. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
21. The appeal, insofar as it relates to the conversion of existing roof space, is allowed and attached to this decision is a certificate of lawful use or development describing the proposed development which is considered to be lawful.

Roy Curnow

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 June 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The conversion of existing roof space would not require planning permission as it would not be development, as defined in section 55 of the Town and Country Planning Act 1990, as amended.

Signed

Roy Curnow
Inspector

Date 25 August 2023

Reference: APP/J9497/X/23/3317339

First Schedule

The conversion of existing roof space.

Second Schedule

Land at Burl, Skaigh Lane, Belstone, Devon EX20 1RD.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 25 August 2023

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Scale: Not to scale

