

Appeal Decision

Site visit made on 15 August 2023

by T Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 September 2023

Appeal Ref: APP/Q1255/X/23/3314163

46b Merley Lane, Wimborne, BH21 1RY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Stephen Phillips against the decision of the Borough of Poole Council.
 - The application Ref APP/22/01478/K, dated 25 October 2022, was refused by notice dated 3 January 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is a proposed garden room.
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Decision

1. The appeal is dismissed.

Reasons

2. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
 3. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: (i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (ii) They do not constitute a contravention of any enforcement notice then in force.
 4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This turns on whether the proposed building (a single storey garden room within the curtilage of No. 46b) benefits from planning permission for "*buildings etc incidental to the enjoyment of a dwellinghouse*" granted by Article 3 and Schedule 2, Part 2, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order").
 5. Planning policies and the benefits, merits, or otherwise of the location of the proposed garden room are not relevant to my decision which is made solely based on matters of fact and law.
 6. The parties agree that the building would be for incidental purposes and that it would meet all other conditions and limitations of Class E other than in respect of the limitation at E.1(c) which is disputed.
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7. E.1(c) states:

Development is not permitted by Class E if –

- (c) *any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.*

8. The technical guidance (TG) to the Order¹ defines the 'principal elevation' in most cases as *"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 term "original" in relation to a building is defined in Article 2 of the Order to mean the building "as existing" on 1 July 1948, or, if built on or after that date "as so built". In this case therefore the "principal elevation" is to be determined on the basis of No.46b as it was built following planning permission for it granted in 2012 (Council ref: APP/12/00044F).
10. No. 46b was erected as a detached bungalow with garage on a plot located to the rear of houses on the south side of Merley Lane. It is rectangular in shape with its long elevations facing north and south, and short elevations facing east and west.
11. The approach to and from No.46b is via a single private track off Merley Lane. Accepting that it is not a main highway serving the property, it is the only access route to the property for occupiers and visitors.
12. Between the bungalow's elevations and the property boundaries there are strips of land either side of the long elevations which, given their relatively narrow width, I consider are more typical in their appearance of being the side accesses to the bungalow. In contrast, the area of land adjoining the eastern elevation is a larger area of land and laid out as a private garden/patio area, while the area of land adjoining the western elevation is part garden and parking area for the property. This is the nearest area of the property one sees and reaches when approaching from the lane.
13. On these factors alone I consider the property's side elevations read as the long northern and southern ones, with the shorter eastern end elevation being the rear elevation leading on to a private rear garden, and the western end elevation forming the front elevation adjoining the main parking area.
14. Although the main door into the property was located on the northern elevation (close to the corner with the western elevation) that is not by itself determinative. Different to the other elevations, the western elevation has a considerably more articulated design and appearance, having a sizeable part forward projection with a large four-segmental bay window under tiled and

¹ Permitted development rights for householders: Technical Guidance (2019)

gabled eaves, and the set-back part having a large double window. As such, referring to the TG, it clearly has the "main architectural features".

15. Overall, taking account of all the physical factors and evidence before me, I find that the western elevation would clearly be understood to be the front of the house and hence forms the "principal elevation".
16. I note the appellant's point that the garden room would be offset (to the side) of this western elevation. However, while that is true it would still nonetheless be situated on land *"forward of a wall forming the principal elevation of the original dwellinghouse"*.
17. The proposed garden room does not therefore benefit from the planning permission granted by the Order.

Conclusion

18. For these reasons I conclude that the Council's refusal to grant a LDC in respect of the proposed garden room at 46b Merley Lane, Wimborne BH21 1RY, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR