

Appeal Decision

by T Shields DipURP MA MRTPI

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

Decision date: 03 January 2024

Appeal Ref: APP/N0410/X/23/3317280

8 Field Road, Denham, Uxbridge, UB9 4HL

- 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 Jamie O'Hara against the decision of the Buckinghamshire Council.
 - The application Ref. PL/22/3817/SA dated 2 November 2022, was refused by notice dated 15 February 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 two storey and single storey rear extensions.
-

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. No. 8 Field Road is a semi-detached 2 storey dwellinghouse previously enlarged with a 2 storey side extension having a rear projection.
 4. The development subject of the appeal comprises a 2 storey rear extension and a single storey extension, both 3m in depth. The single storey element would be at one end of the rear elevation of the main house, with the 2 storey element centrally positioned between it and the existing 2 storey rear projection.
 5. The main issue in the appeal is whether the Council's decision to refuse a LDC was well-founded. This turns on whether the proposed extensions benefit from the planning permission granted by Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended ("the Order").
 6. Class A of the Order permits the enlargement of a dwellinghouse subject to limitations and conditions. The limitation at Class A.1(j) states that a proposal will not be permitted development if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would (i) exceed 4 metres in height, (ii) have more than one storey, or (iii) have a width greater than half the width of the original dwellinghouse.
-

7. Additionally, A.1(ja) states that any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j).
8. The Technical Guidance (TG) to the Order¹ explains that where a proposed extension is to be joined to an existing extension to the original house, the total enlargement (being the proposed extension together with the previous extension) must meet the limits set out in Class A.1 (e) to (j), whether that was built with express planning permission or as permitted development.
9. The appellant's case is that the 2 proposed extensions should be assessed separately against the Order. In contrast, the Council say that because of minimal gaps (which they describe as too small to be material) between the side walls of the rear extensions, and also between the existing rear projection, the proposed development should be treated as a total enlargement outside of the limits at (j)(i) to (iii) and hence also at A.1(ja).
10. A number of appeal decisions have been submitted relating to similar cases² which I have taken in to account as far as they are relevant. However, while they may be similar in some respects they are not exactly the same as the case before me. I have therefore determined this appeal on its own individual facts and circumstances.
11. The Order and the TG require that for existing and new elements to be considered together they must be *joined*. However, if that is interpreted only in an absolute physical sense it would mean that any gap between the elements, even if only 2mm in width, would be sufficient to meet the limitations of A.1(j), regardless of whether such a design would be no more than an artificial device with no separation in perceived visual terms, or serving any practical purpose other than to circumvent the limitations of Class A.
12. Following on from the above it seems to me that many parts of the Order, including the limitations and conditions within Class A, were drafted with specific intent, including having particular regard to controlling the scope and scale of permitted development in visual terms. As such, I consider that the materiality of any gap in visual terms is a relevant factor.
13. In this case the gap between the side wall of the proposed single storey extension and the proposed 2 storey extension would be 60cm. However, the gap between the single storey extension and the projecting side wall of the original house would be approximately 10cm. On the other side of the 2 storey extension the gap between it and the existing 2 storey extension would also be 60cm, but the gap between the two roofs overhangs would be 10cm or less.
14. Taking all of the proposed development together the two proposed extensions would be seen as infilling all of the space at the rear of the dwelling between the existing 2 storey rear projection and the end wall of the house. There would be no material visual gap perceived between the elements where the gaps are reduced to 10cm or less. In addition the gaps between the elements serve no practical function or purpose and it would be difficult if not impossible to maintain the structures at their narrowest widths.

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

² APP/M4320/X/17/3172923, APP/Y1945/X/16/3151883, APP/T0355/X/17/3189849

15. All of these factors lead me to find that, as a matter of fact and degree, the proposed development together with the existing extension should be treated as a single enlargement of the dwellinghouse. As such, the proposal exceeds the limitations at Class A.1 (j) and (ja) and does not therefore benefit from the planning permission granted by the Order. Since it does not have planning permission it would not be lawful.
16. Given this conclusion it is unnecessary for me to also consider the parties' comments in relation to the design of the roof of the proposed 2 storey element.

Conclusion

17. For these reasons I conclude that the Council's refusal to grant a LDC in respect of the proposed two storey and single storey rear extensions at 8 Field Road, Denham, Uxbridge, UB9 4HL, 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