



Appeal Decision

Site visit made on 19 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2023

Appeal Ref: APP/M4320/X/23/3332059

102 The Serpentine North, Blundellsands, Crosby, Liverpool L23 6TJ

- 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 P Finnegan against the decision of Sefton Metropolitan Borough Council.
 - The application ref DC/2023/01326, dated 27 July 2023, was refused by notice dated 23 October 2023.
 - 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 the erection of a single storey garden room to the rear of the dwellinghouse.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the proposed development as set out in the Council's Decision Notice as it is more concise than that set out in the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. Planning permission was granted in October 2022¹ for various works to the appeal property. The permission was subject to a number of conditions. Condition 12 states 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification), no extensions shall be erected other than those expressly authorised by this permission and shown on the plans listed within Condition 2.'
5. The National Planning Policy Guidance (NPPG) states that when imposing conditions restricting the future use of permitted development, 'the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited

¹ Council Reference DC/2022/01269

or withdrawn.² I have no power to vary or remove condition 12 under this section 195 appeal. I can only determine whether or not the proposed development would contravene it.

6. Condition 12 does not specify which class of permitted development it restricts the use of; it simply states 'no extensions'. The Council contends that the reference to 'extensions' also includes outbuildings. On the face of it, and on its ordinary reading, it is reasonable to infer that 'no extensions' means extensions physically attached to the dwellinghouse. I have been referred to the case of *Warwick District Council v Secretary of State for Levelling Up, Housing And Communities* [2022] EWHC 2145 (Admin). However, this case focused on whether an outbuilding could be considered as an extension for the purposes of Green Belt policy. In the appeal before me, there is no consideration of such policy. Moreover, the judgement found that 'an extension can be detached from the building which it is an extension.' That does not mean an outbuilding is always to be considered an extension.
7. For the purposes of condition 12, if 'extensions' includes outbuildings, and by inference restricts permitted development under Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) then it fails to precisely define what development the condition seeks to restrict. If the condition did indeed restrict the use of Class E permitted development rights then this would be precisely defined as, at the very least, 'no extensions or outbuildings'. However, that is not what it says. Accordingly, I do not find that the proposed outbuilding would contravene condition 12.
8. Notwithstanding the above, Class E.1.(f) states that development is not permitted by Class E if the height of the eaves of the building would exceed 2.5 metres. The permitted development rights for householders: Technical Guidance 2019 states that for a flat roof, 'Eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof - the overhang and the parapet wall should be ignored for the purposes of measurement.'³
9. The appellant confirms the outbuilding would have a flat roof and be at a height of 3m. Therefore, the eaves would exceed 2.5m and as such it would fail to comply with Class E.1.(f) and would not be permitted development.

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a pool annex ancillary to the existing dwelling is 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.

A Walker

INSPECTOR

² Paragraph: 017 Reference ID: 21a-017-20190723

³ Page 12