



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2024

Appeal Ref: APP/T3725/X/23/3321522

**Liberty House, Stoneleigh Road, Blackdown, Leamington Spa,
Warwickshire CV32 6QR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Joanne Baylis against Warwick District Council.
 - The application ref W/23/0357 is dated 8 March 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 an attic conversion, two storey extensions, single storey extensions, a four car garage block, a gym/swimming pool/plant room, and to convert existing garage into habitable space as shown on drawing no x, received on x, with the materials used in any exterior work to be of similar appearance to those used in the construction of the exterior of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Ms Joanne Baylis against Warwick District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposed development was stated on the application form as "refer to accompanying correspondence." The Council's description of development as contained in its letter dated 2 May 2023 more accurately reflects the LDC proposal. I have therefore used this description in my decision.
4. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both parties were contacted and neither objected.
5. The LDC application procedure is governed by the Town and Country Planning (Development Management Procedure) (England) Order 2015 (hereafter referred to as the DMP). Article 39 of Part 8 of the DMP sets out various requirements concerning LDC applications. The Council treated the LDC application as withdrawn because additional information requested from the appellant was not forthcoming (Council's letter to the appellant dated 2 May 2023).

6. Having regard to Article 39 (12), it would appear in this particular case, that although the Council considered the LDC application invalid, the necessary information required by paragraphs (1) to (4) had been provided and the fee paid. Thus, in terms of Article 39(12) the LDC application was valid.
7. Notwithstanding the Council's notice under Article 39(8), the LDC application appears to have met the test for validity under Article 39(12) and, as the Council did not give notice of a decision on the application, I will deal with this appeal on the basis of non-determination under s195(1)(b) of the 1990 Act.

Main Issue

8. Thus, the main issue is, if the Council had refused the application for a LDC, such refusal would have been well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

9. The appeal property is a detached dwellinghouse located in a large plot. Having regard to the appellant's "Analysis of Proposals shown on Permitted Development Plan (Drawing No.2024-PL01 Rev D) against the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO)" (revised) April 2023 document (hereafter referred to as the April 2023 document). The proposals are indicated as follows:
 - Proposal No.1 – Attic Conversion
 - Proposal No.2/No.3 – Two Storey Extensions
 - Proposal No.4 – Single Storey Extensions
 - Proposal No.5 – Single Storey Extension. I note that in April 2023 the Council determined that prior approval is not required for this extension (application Ref: W/23/0339).
 - Proposal No. 6 – Covert Existing Garage into Habitable Space
 - Proposal No. 7 – Four Car Garage Block
 - Proposal No.8 – Gym, Swimming Pool, Plant Room
 - Proposal No. 9 – Garden Room
 - Proposal No.10 – Pavilion
10. In their April 2023 document each of the proposals are considered against the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Article 3 and Schedule 2 grants permission for classes of development described as permitted development (PD). Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse.
11. In relation to Proposal No.1, Class B of Part 1 of Schedule 2 specifically addresses the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B covers additions or alterations to roofs which enlarge the house such as loft conversions.

12. Whilst it is argued that this proposal would comply with the provisions of paragraph B.1 the accompanying drawing (number 2024-PL01 Rev D) provides no details regarding any addition to the roof, its size or position. Thus, it is not possible to assess the proposal accurately against the provisions of the GPDO.
13. In relation to Proposals Nos 2, 3, and 4 Class A of Part 1 specifically addresses the enlargement, improvement or other alteration of a dwellinghouse. No elevation drawings have been submitted to show the exact position of these extensions, their sizes and how they relate to each other or the original dwellinghouse. Thus, I cannot be certain that the proposals meet the conditions and limitations of the GPDO. Moreover, the appellant does not make it clear whether these proposals will be built as a whole, and thus whether it is right to look at the proposals as one discrete operation, rather than in constituent parts. Also, on the information provided, it is not possible to ascertain whether the proposals meet the conditions and limitations of Class B of Part 1 of Schedule 2 of the GPDO.
14. Turning to Proposals Nos. 6, 7, 8, 9 and 10, Class E of Part 1 of the GPDO provides PD rights within the curtilage of a house for the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. Incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse as such and I need to consider whether, in this particular case, it has been shown that the outbuildings are reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such and not for a primary residential use.
15. Whilst the appellant states that these proposals would fall within Class E of the GPDO no information has been provided regarding their design, size and/or layout in order to gauge whether or not their provision would be PD. Whether the purpose of a proposed outbuilding would be incidental to the enjoyment of the dwellinghouse requires a judgement to be made about whether the activities are, as a matter of fact and degree, reasonably required for a purpose incidental to the enjoyment of the dwellinghouse and not for primary residential use.
16. Consideration regarding the nature of the activities carried out in each of the proposed buildings is required to ensure they are incidental or conducive to the very condition of living in the dwellinghouse. The term incidental to the enjoyment of the dwellinghouse cannot rest solely on the unrestrained whim of those that live there but connotes some sense of reasonableness in all the circumstances of the particular case.
17. In LDC cases the burden of proof rests with the appellant and the appropriate test is the balance of probabilities. Having regard to the appellant's submissions, there is insufficient evidence to show that the proposals meet all the limitations and conditions of the GPDO to be granted planning permission by Article 3 of the GPDO.
18. On the evidence available to me I find, as a matter of fact and degree, the submitted plan is not sufficiently precise and unambiguous to show that on the balance of probabilities, the proposals would comply with the GPDO.

Conclusion

19. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the proposals that refusal would have been 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).

Elizabeth Jones

INSPECTOR

