

Appeal Decision

Site visit made on 20 February 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 18th March 2025

Appeal Ref: APP/A4710/X/24/3340993

Martin Mill Cottage, Walker Lane, Wadsworth, Hebden Bridge HX7 8SJ

- The appeal is made by Chris and Alison Alderson under section 195 of the Town and Country Planning Act 1990 against the failure of Calderdale Metropolitan Borough Council to give notice of their decision on an application for a lawful development certificate.
 - The application Ref: 22/01280/192 is dated 25 November 2022 and is made under section 192(1)(b).
 - The operations for which the certificate is sought are described in the application as "Construction of outbuilding".
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether, if the Council had refused the application, their refusal would or would not have been well-founded. The assessment is based on the lawfulness of the operations if begun at the time of the application. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 3. The application was made on the basis that the construction of the outbuilding would be permitted development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Class E, which permit the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The permission is subject to the list of exceptions set out in paragraph E.1 in which development is not permitted.
 4. The appeal gives rise to three issues: (i) whether the outbuilding would be within the curtilage of the dwellinghouse; (ii) whether the outbuilding would not comply with E.1(c) because it would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse; and (iii) whether the outbuilding would not comply with E.1(h) because it would include the construction of a raised platform. I have considered each of these issues in turn, taking into account the appellants' and the Council's representations about them and what I saw at my visit to the property.
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The curtilage

5. The term 'curtilage' is not defined in the Order. The Government publication *Permitted development rights for householders: technical guidance* ("the Guidance") advises that it is understood as follows: "land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area."
6. The appellants state that the outbuilding would be sited on land within their garden, in an area that is accessible by a pathway from the house with no intervening divisions or enclosures, and within what has been marketed by estate agents as "mature gardens extending to approximately 1.5 acres". They state that when recent planning applications were approved for an extension to the house and a garage, this land was shown on the plans as being within the curtilage, and that the H.M. Land Registry filed plan shows the land's historical association with the property.
7. These plans are only site location and ownership plans and are not definitive of the curtilage of the house. The extension and the garage are clearly within the curtilage of the house and the Council did not, and did not need to, identify the extent of the curtilage when dealing with the planning applications.
8. The house sits at the head of a steeply sided narrow valley, which is lined with trees and has a stream running through it. The site for the outbuilding is on a steep slope in woodland at the far end of what has been described as the garden, at a distance of more than 45m from the house. A new path from the house to the outbuilding is proposed but, at present, access to the site from the house is by way of terraces, steps, pathways alongside the stream and stepping-stones over it.
9. In these circumstances, as a matter of fact and degree, I would not describe the land where the outbuilding would be sited as being part of a garden nor as being land that forms part and parcel with the house, which I would confine to land nearer to the house that has an intimate association with it.

The principal elevation

10. The term 'principal elevation' is not defined in the Order. The Guidance states that it is understood as follows:

"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.

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."
11. The appellants maintain that the principal elevation of the house is its eastern elevation and that the Council confirmed this when they approved the planning

application ref.22/00404/HSE granted for "First floor rear extension" to the western elevation. The evidence produced in support of this contention is the decision notice and the approved drawing No. 22.2777.SC1.4A.

Notwithstanding the description of the development applied for, the drawing shows that what was approved was a side extension on the western side of the house. The eastern and western elevations are narrow side elevations that contain no architectural features of any significance. The principal elevation of this house is either its southern or northern elevation.

12. The road winds round the house on higher ground. The southern elevation of the house faces the road at an angle; there is pedestrian access to this elevation by way of steps from the road. The northern elevation of the house faces the road; there is level access here from the road to the garage and steps down from this access to an entrance door in the house.
13. The house was originally two two-storey cottages. They have at some time been converted into one dwelling. The original main access to the cottages would have been on foot using the steps from the road leading to front doors in the southern elevation. At the time, this elevation would have been the front of the cottages and would have been their principal elevation.
14. In my opinion the southern elevation remains as the principal elevation of the house. It contains its main architectural features; it is the only elevation to adjoin a formal garden area; and it enjoys an open aspect to the south over the wooded valley and the stream from an elevated position. By contrast, the northern elevation, although it contains down the steps what is now used as the main entrance to the house, has no architectural features of significance and has little outlook, being less than 2m away from ground that is higher than the first-floor window cills.

The raised platform

15. Paragraph E.1(h) places restrictions on the construction of works such as raised terraces and decking, neither of which are being proposed here. The 'raised platform' which the Council refer to is an integral part of the structural work required to support the outbuilding on the sloping ground. It is not in my opinion a raised platform within the meaning of paragraph E.1(h).

Conclusion

16. I am satisfied that, if the Council had refused the application, their refusal would have been well-founded had it been based on the outbuilding's position outwith the curtilage and forward of the principal elevation. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR