The Planning Inspectorate

Appeal Decision

Site visit made on 8 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/M3645/X/18/3211927
Robin Hill, Burntwood Lane, Caterham CR3 5UN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Nicola Grist against the decision of Tandridge District Council.
- The application, Ref TA/2018/852, dated 5 April 2018, was refused by notice dated 27 June 2018.
- 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 described as "Proposed extensions and new garage".

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Procedural Matter

2. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application for a kitchen/diner extension and a detached garage against the provisions set out in Schedule 2, Part 1, Classes A and E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Main Issue

3. As the appeal is confined to the narrow remit of reviewing the Council's decision, the main issue is whether that decision was well-founded or not well-founded.

Reasons

4. The appeal relates to a detached bungalow that has been significantly altered and extended over the years by previous owners. It is sited within a large plot of land set well back from the road and accessed via a long private drive. The appellant proposes to add an extension to be used as a bedroom to the west

elevation and another extension to be used as a kitchen/diner to the south elevation to replace a conservatory. She also wishes to erect a large detached garage to the west of the bungalow.

5. The main point at issue is the Council's determination that the principal elevation of the dwelling is the southern elevation and, as such, both the kitchen/diner extension and garage would require planning permission. This is because Class A.1.(e) of the GPDO sets out where the enlarged part of the dwelling house would extend beyond a wall which forms the principal elevation of the original dwelling house, development would not be permitted. In addition, the Council take issue that the garage would not be reasonably required for the appellant. The Council accepts that the bedroom extension would accord with all the limitations of Class A and therefore has granted an LDC for this part of the development. It therefore does not form part of this appeal.

6. The Council submitted plans of the building from their Building Control records dating back to 1962, 1964, 1966 and 1989. It would appear from these drawings that the original design of the bungalow was not a purpose-built dwelling but a conversion of "Wolviston Potting Sheds". This could partly explain its rather unusual design with, originally, a central group of rooms, namely the kitchen, bathroom and a bedroom, enclosed by two projecting wings. The wing to the north provided two bedrooms and the wing to the south provided the lounge. These wings had hipped roofs, with a chimney in the south elevation and there was a gable feature in the east elevation over the central core of the dwelling, which visually broke up the length of the main roof. The entrance to the dwelling was from the east and the majority of the windows were positioned within this elevation. The west elevation contained no windows, only nine rendered panels, most of which remain today, and a chimney.

7. The 1964 plans show the addition of a new bedroom within the courtyard adjacent to the northern wing and a cloakroom adjacent to the entrance. This resulted in a new position for the front door, which moved to the southern elevation. However, both of these extensions had flat roofs and therefore the principal architectural feature of the dwelling, namely the expanse of hipped roof with two hipped wings on the east elevation remained.

8. The 1966 plans show a small conservatory has been added to the south elevation and glazed doors inserted into the lounge to access the conservatory. A more substantial extension was added to the dwelling in 1989 when planning permission was given to completely infill the area between the wings and to extend the northern wing. This resulted in the distinctive roof design of the east elevation that is seen today with three additional hipped roofs infilling the area between the north and south wing resulting in a row of five hipped roofs. These plans also show two entrance doors into the dwelling, one to the south and one to the east, both of which open into the same hall area.

9. It is my view based on these drawings and the evolution of the dwelling that the east elevation has always been the principal elevation of the dwelling. The main orientation of the dwelling has always been to the east, overlooking the larger part of the garden, with the addition of wings to create a courtyard and most of the windows positioned in this elevation. The Council have referred to the Department for Communities and Local Government document "Permitted

development rights for householders, Technical Guidance" (TG) which assists with the interpretation of the GPDO. "Principal elevation" is not defined in the GPDO but the TG understands it to be in most cases the part of the house which fronts the main highway serving the dwelling. It will usually contain the main architectural features or a porch and will be what is understood to be the front of the house.

10. In the first instance, the principal elevation relates to the original dwelling house. It would appear that the Council have relied upon the position of the entrance door, lounge window and glazed doors fronting the highway to form their view that the principal elevation is to the south. However, notwithstanding that the highway is some distance away, the lounge fenestration is not particularly distinctive and is on a par with the other fenestration in the property. The entrance door is also not particularly prominent being within a recessed area. Having regard to the history of the development of the property, it is my view that the roof is the main architectural feature and informs my conclusion that the principal elevation is to the east. For these reasons I find that the kitchen/diner would accord with Class A.1.(e)(i).

11. Having regard to the other applicable requirements of the GPDO, I also find that the kitchen/diner extension would not front a highway. This is because the TG sets out that where the distance between a dwelling and the highway is substantial, as in this case, it is unlikely that it can be said that a building fronts the highway. The extension would also not be within 2m of the boundary of the curtilage of the dwelling and the height of the eaves would not exceed 3m. Furthermore, the extension would not exceed 4m in height, would be single storey and would not have a width greater than half the width of the original dwelling. It also would not include the construction of a verandah, balcony or raised platform; the installation, alteration or replacement of a microwave antenna; the installation, alteration or replacement of a chimney; or an alteration to any part of the roof of the dwelling. The extension therefore accords with the limitations set out in Schedule 2, Part 1, Class A of the GPDO.

12. I turn now to consider the proposed development of the detached garage. The drawings show that this would have two double doors which I interpret indicates that the building could accommodate four vehicles. This would be sited to the rear of the dwelling, namely adjacent to the west elevation and therefore would not be situated on land forward of a wall forming the principal elevation of the original dwelling, (Class E.1.(c)). The parties agree that it would not contravene any of the other specific requirements of Class E.

13. The Council are concerned though, that the floor space of the garage would be 89sqm compared to the 195sqm footprint of the original dwelling and there is also already a detached double garage on site with accommodation above. The Council refer to case law and question whether the new garage would be reasonably required for a purpose incidental to the enjoyment of the dwelling.

14. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case.[1] The building will not necessarily be

[1] Emin v SSE & Mid Sussex DC [1989] EGCS 16 and Croydon LBC v Gladden [1994] 1 PLR 30

reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.

15. The proposed garage would have a substantial footprint and the drawings show it would have a pair of double garage doors. This would appear to indicate that the building would be used to store cars. The appellant submits that she and her partner are classic car collectors and states the garage has been designed to meet the needs of their hobby. There would be no commercial or business activity connected with the use and the proposed garage would be sited close to the driveway and dwelling. Their intention is to use the existing garage to house two "modern classic" limited production-run vehicles with the roof space being used to store car valeting items and household furniture currently not in use, such as a cot. The new garage would house a further two, older, classic cars as well as two "daily driver" vehicles, to be used by the appellant and her partner for day-to-day activities. One of the reasons why they bought the dwelling was due to the size of the plot which they hoped would enable them to continue their classic car hobby.

16. In principle, the provision of garaging could be considered incidental to the purposes of the dwelling. Although the footprint of the proposed garage would be 89sqm, this would equate to approximately the floor area of the north wing of the dwelling, which is a substantial building even without the kitchen/diner and bedroom extensions. The Council are concerned that the proposed garage does not compare well to the original footprint of the dwelling. However, it is considered this is an inappropriate comparison as the dwelling has been extended over the years and the assessment of being reasonably required must be in relation to what currently exists on site. An outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with large grounds may not be incidental if situated in the garden of a small cottage. Size alone is not necessarily a determining factor. In this case, the existing double garage could be used to store two classic cars but that would leave two "daily driver" cars parked on the drive. Given the size of the plot, it would not be unreasonable to wish to provide garaging for these vehicles and two more classic cars.

17. It has been put to me by both parties that there are other similar cases were appeal decisions support their main arguments. However, I do not have all the details of the circumstances that led to those decisions and so cannot be sure that they represent a direct parallel to the appeal proposal before me, including with respect to usage and scale. In any case, it has been held in case law that cases such as this are determined as a matter of fact and degree and as such, I have determined this case on its own merits.

18. In conclusion, it is considered that the appellant has demonstrated, on the balance of probabilities, that the proposed garage is reasonably required for, and also designed with, an incidental use in mind. As there is no disagreement over whether the physical criteria of Class E are met, I find that the proposed garage would be permitted development.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed extension and new garage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act, as amended.

D Fleming

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 April 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed extension and detached garage constitute development within the meaning of section 55 of the Act for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015 since the developments fall within Classes A and E of Part 1, Schedule 2 and are thus permitted development.

Signed

D Fleming
Inspector

Date 16 October 2019
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First Schedule

Proposed extension and new garage as specified on drawing numbers 18/1642/01, 18/1642/02, 18/1642/04, 18/1642/05, 18/1642/07, 18/1642/03A, 18/1642/06A and the site plan.

Second Schedule

Land at Robin Hill, Burntwood Lane, Caterham CR3 5UN

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 October 2019

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Scale: nts

