The Planning Inspectorate

Appeal Decision

Site visit made on 5 May 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Appeal Ref: APP/B3438/X/20/3264114
Lask Edge Farm, Lask Edge Road, Leek ST13 8QS

- 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 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 Mrs Hazel Scott against Staffordshire Moorlands District Council.
- The application (Ref SMD/2020/0378) is dated 13 July 2020.
- 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 development permitted under the 2015 GPDO'.

Decision

1. The appeal is allowed in respect of the side extension and detached garage, and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful. The appeal is dismissed in respect of the rear extension and rear dormer roof extension.

Procedural Matter

2. There are 4 elements to the proposal - a rear extension, side extension, rear dormer roof extension and detached garage. Although the Council did not determine the application, it has provided comments on the appeal. Its current position is that the proposed side extension and the detached garage would be permitted development but that the rear extension and the rear dormer roof extension would not.

Main Issue

3. The main issue is whether the various development operations proposed would, on the date of the application, have been development permitted by *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the 'GPDO'). The references below to various classes are those set out in Part 1 of Schedule 2 to the GPDO.

Reasons

The rear extension

4. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. However, this provision is subject to the list of development

that is not permitted at A.1. The dispute in this instance centres on A.1(j), which states that development is not permitted by Class A 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 a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse.

5. It is the last of these that is of concern in this case, but there is disagreement as to whether there is a relevant side elevation. The rear of the original dwellinghouse, to which the proposed rear extension would be attached, is stepped, so that part of the building projects to the rear a little more than the rest of it. The question is whether or not the side of this rear projection amounts to a 'wall forming a side elevation of the original dwellinghouse' for the purposes of Class A.

6. Assistance in interpreting Class A is provided by the Government publication *'Permitted development rights for householders – Technical Guidance'*. This advises that, 'a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls'. While the Technical Guidance is not part of the statutory provisions, it has been provided by the Government to help in interpreting them, and I attach weight to it accordingly.

7. The appellant argues that this feature of the building is not a side elevation but a minor architectural detail of the rear elevation. However, while the variation in the depth of the building is fairly modest, it is not insignificant. The additional depth will result in usable additional space within the building and is more than a mere styling exercise. It is also of sufficient depth to have 2 drainage downpipes attached to it. Class A places no minimum on the depth of a relevant side wall and the Technical Guidance refers to <u>any</u> wall that cannot be identified as being a front wall or a rear wall. The side of the rear projection has been built using a significant quantity of brickwork and is properly described as a 'wall' in my view. Its orientation is such that it is plainly not a front or rear wall, and it is thus, 'a wall forming a side elevation of the original dwellinghouse'.

8. The proposed rear extension would project beyond the side elevation discussed above and it is not a point of dispute that the relevant part would be more than half the width of the original dwellinghouse. Consequently, it does not accord with A.1(j) and is not development permitted by Class A.

9. In reaching my view on the above I have had regard to the recent appeal decision relating to the refusal of prior approval for an apparently similar rear extension at the appeal property. In that case the Inspector concluded that prior approval was not required and considered that the proposal would meet with the requirements of Class A. I am mindful of the importance of consistency in the decision-making process and have considered that appeal decision carefully.

10. However, LDC decisions must be made with regard to the relevant statutory provisions and the facts of what is proposed. While in this case there is an element of judgement regarding the side wall, that matter does not appear to

have been raised with the Inspector and was not addressed by him. Consequently, I am unable to understand why the matter was decided as it was. It is not obvious to me that the Inspector regarded the side elevation as a minor architectural detail as the appellant suggests. In these circumstances, that appeal decision does not lead me to any different conclusion on the matter. Similarly, I have no indication of how the Council considered the issue of the side wall in permitting a similar scheme at the property and that decision does not alter my view either.

11. I appreciate that the Technical Guidance refers to differing eaves heights, but I do not consider that in doing so it is making any wider point about architectural details that is relevant to this appeal.

12. For these reasons I conclude that the proposed rear elevation is not development permitted by Class A.

The rear dormer roof extension

13. Class B permits additions to the roof of a dwellinghouse, subject to certain limitations. B.1(d) establishes that development is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—

    (i) 40 cubic metres in the case of a terrace house, or

    (ii) 50 cubic metres in any other case.

14. Since this is a detached property, the limit is 50 cubic metres. At 48 cubic metres, the dormer extension proposed, considered alone, is less than this. However, the requirement at Class B is to consider the 'resulting roof space' and compare that with 'the original roof space'.

15. Assistance in the interpretation of Class B is provided at Paragraph B.3, which says that 'For the purposes of Class B, "resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not'. The Technical Guidance advises that, 'Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance'.

16. In this case the original dwelling was extended to provide a garage and conservatory following an approval in 1995. The garage and the entrance room which links it to the rest of the dwelling have pitched roofs and thus additional roof space has been created. It is clear from the guidance outlined above that this needs to be included in the roof space calculation. I understand that the roof space above the entrance room and garage does not link through to the main dwelling and is not used as dwelling space. Nevertheless, it forms part of the building and has added to its original roof space, and consequently needs to be included.

17. I do not have an agreed figure for the volume of this additional roof space but it is plainly large enough to ensure that, when included in the calculation, the 50 cubic metre limit would be exceeded. Consequently, the rear dormer is not permitted development.

The side extension and the detached garage

18. The proposed side extension falls to be considered against Class A and the proposed garaged is to be considered against Class E. Class E permits 'the provision within the curtilage of the dwellinghouse of any building …. required for a purpose incidental to the enjoyment of the dwellinghouse as such'. The garage proposed is intended to accommodate classic cars, a purpose in line with Class E.

19. The Council considers that the proposed side extension and garage conform with the various limitations that apply to Classes A and E, a view I share. I will therefore grant a certificate in relation to these elements of the scheme.

Conclusion

20. For the reasons given above I conclude that the proposed rear extension and rear dormer roof extension were not development permitted by Classes A and B of the GPDO when the LDC application was made and these elements of the appeal should fail. The side extension and detached garage were permitted by Classes A and E respectively and the appeal should succeed insofar as it relates to these elements. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended and issue a certificate for these elements of the proposal.

Peter Willows

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 13 July 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 reasons:

The side extension accords with the requirements and limitations set out in Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The detached garage accords with the requirements and limitations set out in Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Peter Willows

Inspector

Date 24 May 2021

Reference: APP/B3438/X/20/3264114

First Schedule

Side extension and detached garage

Second Schedule

Land at Lask Edge Farm, Lask Edge Road, Leek ST13 8QS

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 May 2021

by P H Willows BA MRTPI

Land at: Lask Edge Farm, Lask Edge Road, Leek ST13 8QS

Reference: APP/B3438/X/20/3264114

Scale: Not to Scale

