The Planning Inspectorate

Appeal Decision

Site visit made on 24 November 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/B3438/X/22/3302479
1 Southlowe Avenue, Cellarhead, Staffordshire ST9 0JA

- 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. G. Camm against the decision of Staffordshire Moorlands District Council.
- The application ref SMD/2022/0213, dated 20 April 2022, was refused by notice dated 15 June 2022.
- 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 a single storey side extension.

Decision

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

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the side elevation on which the extension would be constructed fronts a highway.

Reasons

3. The appeal is made on the basis that the development complies with Class A of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015*. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions. The Council accepts that the proposal meets all the criteria at Paragraph A.1, with the single exception of A.1(e)(ii). This establishes that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse.

4. The Government publication *Permitted development rights for householders - Technical Guidance* provides advice in interpreting the provisions of Class A. It advises that the extent to which an elevation of a house fronts a highway will depend on factors such as the angle between the elevation of the house and the highway and the distance between the house and the highway. In cases where that distance is substantial, it is unlikely that a building can be said to front the highway. It adds that the same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.

5. The appeal property is a detached house fronting onto Southlowe Avenue, a cul-de-sac. It is located at the entrance to the cul-de-sac and has a roughly triangular plot. The western elevation, on which the extension would be constructed, faces directly towards Southlowe Road.

6. However, the plot has no frontage to Southlowe Road, being very clearly separated from it by the garden of No 4 Southlowe Road. Moreover, the side elevation of the house is some distance from Southlowe Road, about 17m from the footway according to the appellant, a figure that is not disputed. With these points in mind, I find that, while the side elevation of the appeal property is in clear view from Southlowe Road and faces towards it, it does not front that road. Consequently, there is no conflict with A.1(e)(ii).

7. I appreciate that the inspector who determined a recent appeal concerning the property considered that a two storey side extension on this elevation would extend beyond the established building line of the existing dwelling and No.4 Southlowe Road. However, the question before me concerns the different matter of the relationship of the existing side elevation to the road. The planning merits of this current scheme or any previous scheme are not relevant to my decision, which is dependent solely on whether the relevant permitted development provisions are met.

Conclusion

8. 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 single storey side extension 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 and grant the certificate sought by the appellant.

Peter Willows

INSPECTOR

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 20 April 2022 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 reason:

The side elevation on which the extension would be constructed does not front a highway and the proposed single storey side extension is development permitted by Class A of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015.*

Signed

Peter Willows
Inspector

Date: 30 November 2022
Reference: APP/B3438/X/22/3302479

First Schedule

Single storey side extension

Second Schedule

Land at 1 Southlowe Avenue, Cellarhead, Staffordshire ST9 0JA

IMPORTANT NOTES – SEE OVER

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated:30 November 2022

by Peter Willows BA MRTPI

Land at: 1 Southlowe Avenue, Cellarhead, Staffordshire ST9 0JA

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Scale: Not to Scale

