

Appeal Decision

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 November 2016

Appeal Ref: APP/B9506/X/16/3149818

Hill Close, Lyndhurst Road, Minstead, Lyndhurst, Hampshire, SO43 7FX

- 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 Mr Peter Bennett against the decision of New Forest National Park Authority.
 - The application Ref 16/00224, dated 11 March 2016, was refused by notice dated 13 April 2016.
 - The application was made under section 192(1)(a) 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 extension on the rear of original house, 3m deep by 4m long.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The National Park Authority's notice of refusal of the LDC referred to the Town and Country Planning (General Permitted Development) Order 2015 (the 2015 GPDO). That is the appropriate order, as the application was made on 11 March 2016. However, whilst the officer report on which the decision was based also referred to the 2015 GPDO, that report analysed the proposal against the provisions of the 1995 GPDO. The National Park Authority (NPA) was therefore given an opportunity to clarify its position, which it did by email of 14 November 2016. The appellant was offered an opportunity to comment on that email, but made no representations.
3. As my decision turns on the interpretation of the law and guidance and the submitted plans and written evidence, it was not necessary for me to visit the appeal site.

Main Issue

4. The main issue is whether the refusal of an LDC was well-founded. In this case, that will turn on whether the extension would have been permitted development (PD), if begun at the date of the application. The onus is on the appellant to demonstrate that on the balance of probability.
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Reasons

5. Class A of Part 1 of Schedule 2 of the 2015 GPDO provides that the enlargement, improvement or other alteration of a dwellinghouse will be PD, save in circumstances specified in paragraphs A.1 and A.2 and subject to the conditions set out in paragraph A.3. On the basis of its email clarification, the NPA says that the proposal would not be PD because it falls within the circumstances specified in paragraph A.1(f)(i) and (ii), A.2 (b) and A.2(c) and would breach the condition in A.3(c).
6. Each of those provisions refers to the "enlarged part of the dwellinghouse." That expression is not defined in the GPDO. However, I have regard to the 'Permitted development rights for householders - Technical Guidance' published by the Department for Communities and Local Government (the Technical Guidance). This says the "enlarged part" is understood to mean:

"the part(s) of a dwellinghouse comprising any enlargements of the original house, whether built under permitted development rights or following any application for planning permission, and whether the enlargement is undertaken on a single occasion or added incrementally."
7. Under Article 2(1) of the 2015 GPDO "original" means, in relation to a building, existing on 1 July 1948, as existing on that date. On this basis, the NPA says I must consider the proposed single storey extension in combination with other extensions added since 1 July 1948, to which it would be attached, and that appears to be correct.
8. A single storey extension, comprising the existing utility room, was granted planning permission Ref 27422 in 1984 (the 1984 permission). The proposal would be attached to that utility room extension and its side wall would be removed. In turn, that single storey utility room extension is attached to a two storey flat roofed extension. Planning records do not show whether this was added prior to 1948. However, the NPA says old OS maps indicate that the original 'T' shaped form of the house existed up to the 1960s. This suggests that the two storey flat roofed extension was added after 1948 and, whilst those OS maps are not necessarily conclusive, the appellant has said nothing and provided no evidence to contradict the NPA's contention. On the balance of probability, I conclude that this two storey extension was erected after 1 July 1948.
9. Whether an extension would be on a rear or side wall of the original dwelling, or on its principal elevation, is relevant to several parts of the 2015 GPDO. The NPA's officer report says that the original principal elevation of the dwellinghouse is "opposite the location of the proposed extension" and this is consistent with the grounds of appeal and a plan submitted by the appellant which shows the south elevation as "the original front aspect". The proposed extension would be on the north elevation, adjoining a single storey utility room extension added pursuant to the 1984 permission. I therefore have no reason to disagree that the proposal would extend beyond the rear wall of the original dwelling.
10. Paragraph A.1(f) provides that a proposal will not be PD if "the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse..."

11. That NPA says that the proposal falls foul of A.1(f)(i) and (ii) because, among other things, the enlarged part, in combination with previous extensions, would not have a single storey. As the "enlarged part" includes the post-1948 two storey extension, I accept that it would not have a single storey. However, this means that paragraph A.1(f) is simply not relevant.
12. The pertinent provision for rear extensions with more than a single storey is in fact paragraph A.1(h). The relevant part provides that a proposal will not be PD if "the enlarged part of the dwellinghouse would have more than a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres..." Having regard to the Technical Guidance and the diagrams contained within it, the entire enlarged part of the house must not extend beyond the rear wall of the original dwellinghouse by more than 3 metres. The entire enlarged part includes the single storey utility room extension and the post-1948 two storey extension. By reference to the submitted plans, it is clear that the entire enlarged part would extend more than 3 meters beyond the rear wall of the original dwellinghouse, onto which the post-1948 two storey extension was built. The proposal would not therefore be PD because of paragraph A.1(h), but I will also consider the other parts of the 2015 GPDO to which the NPA refers.
13. Paragraph A.2 states that, "in the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if...(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or (c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse."
14. The dwellinghouse is on article 2(3) land, as it is within a National Park. The proposed extension would not extend beyond a wall forming an east side elevation of the original house. However, the enlarged part, including the single storey utility room extension and the post-1948 two storey extension, does extend beyond a wall forming a west side elevation of the original house. Furthermore, I have already concluded that the enlarged part would have more than a single storey and extend beyond the rear wall of the original house. Accordingly, paragraph A.2(b) and (c) would also prevent the proposal being PD.
15. Finally, the NPA refers to the condition imposed by paragraph A.3(c) regarding roof pitches. I cannot easily tell from the evidence before me whether that condition would be complied with, but this is irrelevant, as paragraphs A.1(h) and A.2(b) and (c) of Class A, Part 1, Schedule 2 of the 2015 GPDO prevent the proposal being PD in any event.
16. I therefore conclude that the appellant has not discharged the burden upon him and the refusal of an LDC was well-founded. The appeal must therefore fail.

J A Murray

INSPECTOR