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# Appeal Decision

Site visit made on 15 December 2015

**by Susan Wraith DipURP MRTPI**

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

**Decision date: 1 February 2016**

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**Appeal ref: APP/B9506/X/15/3022061**

**Wildcroft, Badminton Drove, Fawley, Southampton SO45 1BW**

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
  - The appeal is made by Mrs Katriona Baker against the decision of the New Forest National Park Authority [hereafter "the Authority"].
  - The application no: 14/01003 dated 6 October 2014 was refused by notice dated 30 December 2014.
  - The application was made under s192(1)(b) of the Act.
  - The development for which an LDC is sought is: Single storey front and rear extensions.
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. At the site visit the parties drew my attention to a drawing labelled Bak/202A which comprised part of the LDC application but was not within my bundle. The drawing showed a small revision to a window in the north elevation. Although of no consequence to the issues in this appeal, for purposes of completeness a copy of the revised drawing has been obtained from the appellant.
3. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application, i.e. 6 October 2014. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
4. The General Permitted Development Order 2015<sup>1</sup> came into force on 15 April 2015. It updated and consolidated the previous permitted development provisions. However, at the time of the application it was the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [hereafter "the Order"] that was in force. It is this earlier Order against which the appeal proposals are to be considered and that is relevant to the main arguments in this appeal.

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<sup>1</sup> The Town and Country Planning (General Permitted Development)(England) Order 2015.

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5. In considering this appeal I have had regard to the technical guidance for householder developments<sup>2</sup> [hereafter "the Technical Guidance"]. Whilst not a definitive statement of the law it gives an explanation of the rules on permitted development and how government intends that they are applied. As such, this guidance should be followed unless there are specific reasons for taking a different view arising from the particular facts of the case.
6. In an LDC appeal the burden of proof to demonstrate that the development is lawful is upon the appellant. The planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

### **Main issue**

7. The Authority's reason for refusal is that the development would fail to comply with limitations A.1(d) and A.2(b) and with condition A.3(a) under Class A of Part 1 to Schedule 2 of the 1995 Order<sup>3</sup>. The main issue in this appeal is whether the Authority's decision to refuse the LDC was well founded for these, or any other, reason(s).

### **Reasons**

#### *General points*

8. The essence of the appellant's case is that the LDC proposals would have been permitted development under Class A and would have complied with the limitations cited by the Authority. The site is within the New Forest National Park. As such the development would have taken place on article 1(5) land<sup>4</sup>. As agreed by the parties, the provisions of paragraph A.2 of Class A (together with other limitations under paragraph A.1) would therefore have applied.
9. There are two elements to the LDC proposals i.e. a rear extension and a front extension, which are severable one from the other. I shall, therefore, consider each element separately and in turn. It would be open to me to issue a certificate in part, if I was to find one (but not the other) of the elements to be lawful<sup>5</sup>.
10. The parties agree that, for the purposes of permitted development, the principal elevation of the dwellinghouse is that which faces south and is labelled "south" on the application drawing. This is the elevation which contains the main architectural features such as main windows, balcony and main entrance to the house, and which is orientated to enjoy the south facing aspect. I concur that this is the principal elevation.
11. The parties also appear to be agreement that the principal elevation, in this case, is the front elevation (albeit not necessarily fronting a highway) with the rear elevation being that opposite the front elevation (labelled "north" on the application drawing) and the side elevations being those which do not form the front or rear<sup>6</sup> being labelled "west" and "east". There are some arguments

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<sup>2</sup> Department for Communities and Local Government, Permitted development for householders, Technical Guidance.

<sup>3</sup> Part 1 to Schedule 2 to the Order concerned Development Within the Curtilage of a Dwellinghouse. Class A to Part 1 provided for the enlargement, improvement or other alteration of a dwellinghouse as permitted development subject to limitations and conditions.

<sup>4</sup> Article 1(5) land is defined in the 1995 Order as land within (amongst other things) a National Park.

<sup>5</sup> The provisions for issuing an LDC in whole or part are set out in s193(4) of the Act.

<sup>6</sup> This approach accords with the Technical Guidance as set out at pages 11, 14 and 21.

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relating to what forms a side elevation for permitted development purposes. These are matters to which I shall return. However, in general terms I concur with what has been identified as the front, side and rear elevations.

12. Within the permitted development provisions there are a number of references to the "original dwellinghouse". The 1995 Order interprets "original", in relation to a building, as that existing on 1st July 1948, or as it was first built. The Authority has provided plans of the dwellinghouse as first built, which was after 1948, the outline of which appears to be depicted on the application drawings. I shall take these plans as being representative of what constituted the original dwellinghouse in this case.

*The front extension*

13. Turing now to the proposed front extension specifically, under limitation A.1(d) of the 1995 Order development would not have been permitted if the enlarged part of the dwellinghouse would have extended beyond a wall which:

- (i) fronted a highway and
- (ii) formed either the principal elevation or a side elevation of the original dwellinghouse.

In other words, the development could have been permitted development unless it failed to meet both parts of limitation A.1(d), subject also to the other limitations.

14. There is no dispute that the extension would have extended beyond a wall forming the principal elevation of the original dwellinghouse. The matter to be decided upon, therefore, is whether the enlarged part of the dwellinghouse would have extended beyond a wall which fronted a highway.
15. I have no reason to question that Badminton Drove is a highway, it being a way over which (it appears) the public at large can freely pass albeit being roughly surfaced with natural verges and single track in parts; and not having the appearance of a highway constructed to adoptable standards. It follows the south east boundary of the appeal site and bends around its boundary at the south west. The width of the highway appears to be defined by the hedgerow surrounding the site's south west and south east boundaries and the back edge of the verge to its other side.
16. The Technical Guidance provides some assistance in the interpretation of whether an elevation of a house fronts a highway. It states that factors such as the angle between the elevation of the house and the highway, the distance between the house and the highway and whether there is a significant intervening area of land are all relevant factors<sup>7</sup>.
17. In this case there is no intervening land. Taking a perpendicular line at various points along the principal elevation, each would pass over land within the residential curtilage to the point where it would meet the highway boundary. At its eastern end the principal elevation is quite close to the highway with the distance incrementally increasing towards its western end. Even then, the distance is not so substantial as to dissociate the dwelling from the highway which, together with its associated garden buildings, is contained within its curtilage defined by the highway boundary at its south west and south east sides.

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<sup>7</sup> The Technical Guidance at pages 11-13 provides guidance on the interpretation of limitation A.1(d).

18. Regarding its angle, when projecting the plane of the elevation in a hypothetical line, the line would meet the highway boundary at an angle in excess of 50°<sup>8</sup>. The Technical Guidance indicates that if the angle is greater than 45° the elevation will not be considered to “front” the highway. However, given that there are substantial variations in individual cases the Technical Guidance cannot cover all situations and, in some cases, an element of judgement will be called for.
19. Whilst the dwelling is positioned to face south, and therefore at an angle to the highway along its south east length, it would directly face the tangent at the south point where the highway curves around the dwelling curtilage to head south west. The principal elevation is clearly seen from the highway, in particular when approaching along Badminton Drove from the south where it is of commanding appearance when viewed through the access opening. The land directly in front of the principal elevation, as well as being garden land in part, also accommodates the main access and parking area to the dwelling, and provides a legible approach from the highway to the dwellinghouse and its main doorway entrance.
20. For all these reasons, and taking into account also its proximity to the highway and there being no intervening land, I find that the principal elevation in these circumstances is one which fronts a highway as a matter of fact and degree.
21. Even if I had found in the appellant’s favour on that point, it would still have been necessary to consider the implications of limitation A.2. Where on Article 1(5) land, development would not have been permitted if the enlarged part of the dwellinghouse would have extended beyond a wall forming a side elevation of the original dwellinghouse.
22. The front of the dwelling is stepped such that there is a small section of the wall of the original dwellinghouse which faces east (to which the proposed storm porch would attach) which would be a side elevation when applying the interpretation given in the Technical Guidance<sup>9</sup>.
23. As explained in the Technical Guidance, the term ‘extend beyond a wall’ means not only the area immediately in front of the wall, but also an area in front of a line drawn in the same plane from the ends of the wall to the boundaries of the property<sup>10</sup>. Therefore, irrespective of whether the storm porch (or any part of the extension) directly attached to the side wall or was integral to the extension, the development would have failed to meet limitation A.2(b) because it would have extended beyond the side wall as interpreted by the Technical Guidance.
24. In respect of the front extension, therefore, I find it would have been development extending beyond a wall which fronted a highway and formed the principal elevation, and would thus have failed to meet limitation A.1(d). Additionally, the enlarged part of the dwelling would have extended beyond a wall forming a side elevation of the original dwellinghouse. The development would, therefore, have failed to meet limitation A.2(b).

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<sup>8</sup> The application drawings indicate that the angle is 54.76°. This is not disputed by the Authority.

<sup>9</sup> This is explained in the Technical Guidance at page 21.

<sup>10</sup> This is explained in the Technical Guidance at page 11.

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### *The rear extension*

25. With regard to the rear extension, it is the Authority's view that this, also, would have failed to meet limitation A.2(b). The house plans for the original dwellinghouse show that the rear elevation was originally stepped, having a rectangular shaped single storey wing which contained a tool store, larder, fuel store, porch and WC. It appears that much of the original wing was removed many years ago when an extension was built pursuant to a planning permission granted in 1986.
26. The extension (the subject of this appeal) would have extended beyond the line of the original side walls of the wing which were sufficiently substantial as to have been regarded as part of the side elevations of the original dwelling. The appellant argues, however, that limitation A.2(b) did not apply as these side walls no longer existed. As such they could not (the appellant contends) have been walls "forming" a side elevation of the original dwellinghouse.
27. I acknowledge that the word "forming" is a word in the present tense. However, when read in context, i.e. "...a wall forming a side elevation of the original dwellinghouse" for a number of reasons I favour the interpretation given by the Authority. Firstly, the provision referred to "a" wall (as opposed to "the" wall) which could have meant any wall and could have included a wall which had been demolished. Additionally the provision deferred to "the original dwellinghouse" that being the dwelling as it was first built. When reading Part 1 of Schedule 2 to the 1995 Order as a whole, the extent of the development permitted as set out in a number of the limitations was measured against "the original dwellinghouse". It seems to me that the Order intended "the original dwellinghouse" to be a constant. I do not agree, therefore, that limitation A.2(b) could only have applied where the original side walls remained in situ at the time the development was to be carried out.
28. In forming this view I have had regard to the generality of the findings in the case of *Arnold v Secretary of State for Communities and Local Government 2015 EWHC 1197 (Admin)* which considered the implications for permitted development in circumstances where there had been demolition of parts of the original dwelling, albeit that case is distinguishable from the appeal case on its facts.
29. I conclude, therefore, in respect of the rear extension that it would have extended beyond walls forming side elevations of the original dwellinghouse. It would, thus, have failed to meet limitation A.2(b).

### *Other matter*

30. A further reason for refusal of the LDC concerns the absence of any specification for the roofing materials. Condition A.3(a) of Part 1 required that materials should be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Clay red facing brick, similar to the existing dwelling, was proposed on the application drawing. Whilst there was no specification as such for the roofing materials, the Technical Guidance advises that flat roofs will not normally have any visual impact and so the need for materials of similar appearance should not apply<sup>11</sup>. Overall, I am

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<sup>11</sup> This is covered in the Technical Guidance at pages 28 and 29.

satisfied that compliance with condition A.3(a) would have been achievable. This is not a factor which has led to my decision to dismiss this appeal.

**Conclusions**

31. For the reasons above I conclude that the case to support the issuing of an LDC, in respect of each separate element of the proposal i.e. the front extension and the rear extension, has not been adequately made out. I find that the Authority's refusal to grant an LDC in respect of single storey front and rear extensions was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

*Susan Wraith*

INSPECTOR