The Planning Inspectorate

Appeal Decision

Site visit made on 12 August 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/B9506/X/20/3246852
Little Pond Cottage, Bisterne Close, Burley BH24 4AZ

- 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 S Salmon against the decision of New Forest National Park Authority.
- The application Ref 19/00656, dated 9 August 2019, was refused by notice dated 7 October 2019.
- 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 single storey rear 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.

Procedural Matter

2. There is a difference between the description of the proposed development given on the application form and that on the decision issued by New Forest National Park Authority (NFNPA). As it accurately describes what is proposed, I have used that from the former.

Main Issue

3. The main issue is whether the NFNPA's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

4. Under s192(1)(b) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful, they may make an application for the purpose to the local planning authority. Amongst other things, the application should specify the land, describe the operations in question and give the reasons for determining the operations to be lawful. Where, as here, an application is refused, s195 of the 1990 Act provides the right to appeal the decision. The onus lies with an appellant to prove his case, on the balance of probability.

5. Little Pond Cottage is a detached, two-storey dwelling that lies within the open countryside. It is set back from a minor road that runs through woodland and

small fields about a mile to the east of the centre of the village of Burley. The house has large gardens to its front and rear.

6. Both parties refer to the planning history of the site in their submissions, and it will be helpful to recap this; though, in the main, there is only a need to refer to what was approved and built. Neither argues that Little Pond Cottage, (the dwellinghouse), does not pre-date 1 July 1948. The relevance of this date is found in the terms of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') that relate to the enlargement, improvement or other alteration of a dwellinghouse.

7. Planning permission was granted, by virtue of the approval of application 83/23435, for 'Alterations and extension to dining room, addition of a cloakroom and porch and living room with two bedrooms and bathroom on first floor; erection of double car shelter (extension outbuildings to be demolished)'. Amongst its terms, this permission included a two-storey side extension to the dwellinghouse and a detached car shelter. It also entailed the removal of a significant element of the dwelling at its rear. This resulted in the rear wall of the house being moved southwards, that is to say well back from the position of the house's original rear wall.

8. Following this, in 2008, planning permission was granted for a ground and first floor extension; front dormer window; demolition of conservatory (local planning authority reference 08/93139). At the rear of the property, the first floor extension that was approved was built off the rear wall to the house that had been created as a result of permission 83/23435.

9. The application which forms the basis of the appeal that is before me was for a certificate of proposed development for a single storey extension to create a garden room at the rear of the dwellinghouse. It attempted to overcome the reasons given by the NFNPA for refusing to issue a certificate for a similar development. As the proposed developments differ, and each has to be assessed on its individual merits, there is no need to expand on the details of that earlier application. It is only referred to for the sake of completeness. Suffice to say, the appellant's position is that the extension that he now proposes would accord with the terms of Class A of the GPDO.

10. In essence, the NFNPA's position is that the proposed extension should be assessed in combination with previous enlargements to the house arising from the 1983 and 2008 planning permissions, as directed by Class A.1.(ja) of the GPDO. As the latter extension is not single storey, exceeds four metres in height and includes a balcony, so the proposed development would fail to comply with paragraphs A.1.(f)(ii) and (k)(i) of Class A of Part 1 of Schedule 2 of the GPDO. The NFNPA therefore found that the proposed extension (when considered as a total resulting enlargement to the original house) could not be classed as permitted development.

11. Notwithstanding that the NFNPA's decision notice does not refer to it, the key to this appeal are the terms of paragraph A.1.(ja) of Class A of Part 1 of Schedule 2 of the GPDO. This states that a proposal, where *"any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j)",* would not amount to

'permitted development' under the GPDO. Therefore, an express grant of planning permission would be required.

12. The NFNPA states that its position that the proposed extension would be contrary to sub-paragraphs (f)(ii) and (k)(i) of the GPDO is supported by the document 'Permitted development rights for householders - Technical Guidance'[1]. This clarifies that where *"the proposed extension is to be joined to an existing extension to the original house, whether that was built following a planning application or under permitted development rights, the total enlargement (being the proposed extension together with the previous extension) must meet the limits set out in (e) to (j)"*.

13. To a degree, for the Council's position to be correct the dwellinghouse's existing rear wall had to have been created through the enlargement of the dwellinghouse. I use the phrase 'to a degree' advisedly, for the following reason. If the terms of sub-paragraph A.1.(ja) are triggered, then development in excess of the limits in paragraphs A.1.(e) to (j) would not be permitted development. Self-evidently, the matters referred to in sub-paragraph (k)(i), the construction or provision of a verandah, balcony or raised platform, fall outside this limitation.

14. It appears that no existing floor drawings were submitted with the 1983 scheme. However, its approved drawings show the removal of a substantial element to the rear of the original building. The nature of the works in the area just to the north of the word 'dining' on the approved drawing is unclear. What is clear is that it involved the establishment of a new rear wall, set significantly back from what parties agree to have been the line of the rear wall of the original dwellinghouse. Thus, there, the building was reduced in size rather than being added to. Therefore, applying a common meaning to the word, I find that these works, described by the NFNPA in its statement as a 're-configuration', did not equate to the 'enlargement' of the building.

15. The 1983 permission clearly enlarged Little Pond Cottage, by reason of the two-storey side extension, but taking a fact and degree approach I find that the works to create the new rear wall were not part of the property's enlargement. Therefore, that the proposed extension would join this wall does not mean that it would join a previous enlargement to the dwellinghouse.

16. Both parties agree that, by reason of the valley that is incorporated into its design, the proposed single storey extension would not join any part of the 2008 extension. Save for the approved schemes of 1983 and 2008, my attention has not drawn my attention to any other enlargement of the dwellinghouse to which the garden room would be attached. Paragraph 11.6 of the Officer's report stated "that significant changes have been carried out to the building between these dates" [the dates referred to in this paragraph being 1983 and 2008]. However, by email dated 27 January 2020, the NFNPA had clarified to the appellant that this referred to "the removal of pre-existing outbuildings of 1983 and", also using the term, "the re-configuration of the rear wall".

17. Therefore, I find that the provisions of Class A.1.(ja) are not triggered by the proposal that is before me and that, therefore, the proposed extension would

[1] Department of Communities and Local Government, April 2017

be permitted development in accordance with the terms of Class A of Part 1 to Schedule 2 of the GPDO.

Conclusion

18. 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 rear 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.

Roy Curnow

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 9 August 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence shows that, on the balance of probability, the proposed single storey extension would be permitted development, as defined in Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Roy Curnow
Inspector

Date: 27 November 2020
Reference: APP/B9506/X/20/3246852

First Schedule
Single storey extension

Second Schedule

Land at Little Pond Cottage, Bisterne Close, Burley BH24 4AZ

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:27 November 2020

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Scale: Not to scale