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# Appeal Decision

**by Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

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**Appeal Ref: APP/B9506/X/21/3266198**

**Lynwood, Fletchwood Lane, Totton, Southampton SO40 7DZ**

- 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 A Meader against the decision of New Forest National Park Authority.
- The application Ref 20/00538, dated 23 July 2020, was refused by notice dated 24 September 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 a single storey rear extension.

**Summary of Decision: The appeal is dismissed.**

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## Preliminary Matters

1. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
2. Whether an LDC should be issued in respect of the proposed development is strictly a matter of fact and law.

## Main Issue

3. The main issue in this appeal is whether it has been shown that the proposed extension is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class A.

## Reasons

4. It is for the appellant to show that an LDC should be issued, the relevant test of the evidence being on the balance of probability.
5. The detached single storey dwelling in this appeal occupies a spacious plot. The extension would be at the rear of the dwelling. According to the submitted drawings, the extension would be no greater than 4 m in depth or height and the external wall and roof materials would be similar to those of the dwelling. The principal elevation of the dwelling would be unaffected and there is no other elevation fronting a highway.

6. The GPDO at Article 3, Schedule 2, Part 1, Class A grants planning permission to extend a dwelling where the size and locational limitations in paragraph A.1 are met. As the dwelling is situated in the New Forest National Park (NP), the limitations in paragraph A.2 must also be met. Furthermore, the conditions at paragraph A.3 must be complied with. The National Park Authority (NPA) did not dispute that the extension would meet the relevant limitations in paragraph A.1 (b)-(f), (i) and (j) together with those in paragraph A.2 (a), (c) and (d) and that the 'similar materials' condition in paragraph A.3 (a) would be complied with. I found no reason to reach any different conclusions.
7. Be that as it may, it is also necessary to assess the extension against the limitation at paragraph A.2 (b). The effect of this limitation is that within the NP, extending beyond a wall forming a side elevation of the original dwelling is not granted planning permission by Part 1, Class A. According to the Government's Technical Guidance (TG)<sup>1</sup> a wall forming a side elevation will be any wall that cannot be identified as being a front wall or a rear wall; there will often be more than two side elevation walls. In the TG the accompanying diagram showing a dwelling where the plan form is 'stepped' at the rear, with the side walls labelled as forming a side elevation, illustrates this point. The TG also makes it clear that where an extension fills the area between a side and rear elevation, the Class A limitations on extensions beyond both elevations apply. Advice and the accompanying diagram in the TG concerning what forms the rear wall of the original dwelling is of limited relevance.
8. The dwelling has an L-shape plan form which includes a 'step' in the rear wall, rising up to eaves level. The lounge part of the rear elevation projects beyond the adjacent bedroom part by about 1.2 m and although the roof is in the same plane, there is a clear break in the rear eaves line. The projection forms part of the original dwelling. In the context of the overall dimensions of the dwelling I regard the size of the return wall as significant and not 'de-minimis'. The return wall is not parallel to the rear wall of the dwelling and so is not rear-facing. Neither is this length of wall front-facing; it faces the side, being parallel to a longer wall forming a side elevation of the dwelling. Therefore, the return wall must be a side elevation.
9. The extension would infill the area to the rear of the dwelling adjoining the return wall. Consequently, the extension would protrude beyond a wall forming a side elevation of the original dwelling. As this would exceed the limitation at paragraph A.2 (b), the extension cannot be granted planning permission by the GPDO Article 3, Schedule 2, Part 1, Class A. To my knowledge, there is no other Part or Class within the GPDO which would grant permission for the extension.
10. The appellant referenced two appeal decisions where a return wall was considered to form part of a dwelling's rear elevation. However, as I was not provided with full details of those cases, it is difficult to make any meaningful comparison with the circumstances in this appeal. In one of the cases it appears that the return wall was substantially smaller than that in this appeal. In any event, both decisions pre-date the current version of the TG. The NPA supplied a copy of a recent appeal decision where the Inspector reached similar conclusions to my findings in this case, in relation to a much smaller return

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<sup>1</sup> Permitted development rights for householders Technical Guidance: MHCLG September 2019.

wall. Ultimately, I have dealt with this appeal on the basis of its own individual circumstances.

11. Therefore, on the balance of probability the appellant has not shown that the extension is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of a grant of express planning permission, the extension would not be lawful for planning purposes.

### **Conclusion**

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the extension was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

### **Formal Decision**

13. The appeal is dismissed.

*Stephen Hawkins*

INSPECTOR