



Appeal Decision

Site visit made on 11 April 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/B9506/X/21/3289364

Land at Wood Close, Hangersley, Ringwood, Hampshire BH24 3JN

- 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 Dr Jon Linton against the decision of New Forest National Park Authority.
 - The application ref 21/00561, dated 3 June 2021, was refused by notice dated 28 July 2021.
 - 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 described in the application as: a rear extension to the building.
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Main Issue

1. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
2. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. The burden of proof is on the appellant to show that, on the balance of probability, the development referred to in the application would be lawful if begun on the date the application was made.
3. The matter in dispute between the parties is whether or not the proposed development, if instituted or begun at the time of the LDC application, would have been permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order). This is the main consideration in this case.

Reasons

4. It is the appellant's case that the proposed extension would be permitted by Class A, Part 1, Article 3, Schedule 2 of the 2015 Order. This permits the enlargement, improvement or other alteration of a dwellinghouse.
5. Part 1 of Article 2(3) to (5), Schedule 1 of the 2015 Order defines article 2(3) land as including land within a National Park. The appeal site is within the New Forest National Park. Accordingly, the criteria of A.2. apply in this case to the

- development permitted by Class A, and is a list of the type of development that is not permitted by Class A in the case of a dwellinghouse on article 2(3) land.
6. Under criterion A.2.(b), development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. It is the Council's case that the proposed development would be that specified in criterion A.2.(b), and that for this reason it would not be permitted by Class A.
 7. The appeal site is occupied by a detached dwelling. Its front elevation clearly faces the drive and parking area to the front of the appeal site and its rear elevation faces the garden area to the rear of the site. The rear elevation is stepped, such that the depth of the dwelling increases from west to east. As such, the dwelling broadly forms an 'L' shape.
 8. The proposed development is an extension of some 4 metres from the rear (south facing) elevation, where the plans show that the dwelling is only one room deep. To the east of the proposed extension there is a step in the rear elevation, where the depth of the dwelling increases. As such, the east facing elevation of the extension would be parallel to the west facing elevation of this first step. Further east there is a more significant increase in the depth of the dwelling with a further step in the rear facing elevation. This section of the dwelling forms the 'L' shape with the remainder of the dwelling. The west facing elevation of this section would also be parallel to the east facing elevation of the extension.
 9. Critical to my determination of the appeal is whether the west facing elevations of these rear sections of the dwelling are walls forming a side elevation of the original dwellinghouse for the purposes of A.2.(b). Also, whether the extension would be an enlargement of the dwellinghouse that would extend beyond these walls.
 10. The appellant suggests that the limitation stated in A.2.(b) should only apply to development that would increase the width of the property, as the intention of the A.2.(b) limitation is to avoid any visual impact from the front of the property resulting from the development. In this regard the appellant points to the 'Householder Development Consents Review - DCLG May 2007', although I have not been provided with this document or any relevant extracts of it.
 11. Whatever the purpose of any proposed changes to the permitted development regime may have been in 2007, in determining this appeal I must have regard to the provisions of the 2015 Order itself and the ordinary meaning of the language used. I have also had regard to the MHCLG Technical Guidance¹ (TG), which provides assistance in the interpretation of Class A of the 2015 Order.
 12. Page 22 of the TG provides specific advice on identifying walls forming a side elevation on a dwelling. It states that 'a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall'. It advises that 'houses will often have more than two side elevation walls'. In the case before me the plans indicate that the west facing elevations of the stepped sections to the rear of the dwelling are at a right angle to the rear facing elevation of the dwelling. Often referred to as a 'side return', these

¹ Ministry of Housing, Communities and Local Government - Permitted development rights for householders Technical Guidance - September 2019

west facing elevations clearly face the land to the side of the appeal dwelling (i.e. not its front driveway or rear garden) and are parallel to the side elevation of the dwelling. I cannot, therefore, identify these side returns as a front or rear wall of the dwelling. Whilst the side return closest to the proposed extension is narrow, I cannot regard it as a feature of the rear elevation of the dwelling, particularly as it forms the side wall of a substantial two storey rear projecting element of the building.

13. Further to the above, page 22 of the TG provides an illustrative example of walls forming a side elevation. This example compares to the stepped rear elevation of the appeal dwelling. Using this example as a guide, it is clear that the side returns of the stepped sections to the rear of the appeal dwelling form a side elevation.
14. The TG also makes it clear that, where an extension fills the area between a side elevation and rear wall, then the restrictions on extensions beyond rear walls **and** side walls will both apply. I acknowledge that the proposed extension would not be attached to any side elevation of the dwelling identified above, and that there would be a gap between the east facing elevation of the extension and the side return closest to it. A similar scenario is, however, dealt with in the illustrative diagram on page 24 of the TG. In that example, whilst the extension is not attached to any rear walls of the dwelling, the TG still regards the development in that example as extending beyond a rear wall. Applying this to the case before me, I can only conclude that the proposed extension would extend beyond walls forming the side elevations of the dwelling identified above.
15. I have been given no reason to conclude that the stepped sections to the rear of the dwelling, referred to above, are not part of the original dwellinghouse. As such, it is more likely than not that the west facing elevations of these stepped rear sections comprise walls that form a side elevation of the original dwellinghouse.
16. I acknowledge that the illustrative example and advice given on page 19 of the TG might be interpreted as suggesting that an extension attached to a wall forming the side elevation of an original dwellinghouse on article 2(3) land would be permitted, and that this might contradict the guidance considered above. However, the guidance on page 19 of the TG is given in the context of the limitations that relate only to enlargements beyond the rear wall of an original dwellinghouse. The TG later provides specific guidance on enlargements beyond walls forming a side elevation of the original dwellinghouse, clarifying what elements of a dwellinghouse are to be regarded as such and confirming the restrictions that apply to enlargements beyond side elevations. This latter part of the TG is of most relevance to the main consideration in this case.
17. All things considered, it is more likely than not that the development as proposed would not have been permitted by Class A, of Part 1, Article 3, Schedule 2 of the Order if begun on the date the LDC application was made.

Conclusions

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a rear extension to the

building 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.

Formal Decision

19. The appeal is dismissed.

J Moss

INSPECTOR