Appeal Decision

No site visit made

by Ian Currie BA MPhil MRICS MRTP (Retired)

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

Decision date: 3 January 2014

Appeal ref:- APP/B1550/X/13/2195978
Mordaunt Cottage, Rayleigh Downs Road, Rayleigh, Essex, SS6 7LR

• 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 lawful development certificate (LDC).
• The Appeal is made by Mr and Mrs M Beattie against the decision of Rochford District Council.
• The application, Ref: 12/00415/LDC, dated 1 July 2012, was refused by notice dated 11 September 2012.
• The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
• The development for which a lawful development certificate was sought is the erection of single-storey side and rear extensions.

Summary of decision:- The appeal is dismissed.

Preliminary matters

1. For the avoidance of doubt, the planning merits of any future operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

2. I consider that the main issue is whether the Council’s decision to refuse to grant a lawful development certificate (LDC) was well-founded. Where a LDC is sought, the onus of proof is on the appellant and the standard of proof is the balance of probabilities.

Relevant Planning History

3. Planning permission was granted by the local planning authority on 8 November 1995, under reference F/0500/95/ROC, for 'Substantially demolish, remodel, and extend existing bungalow to form 2-bed detached bungalow'. Condition 7 was attached to the permission to read as follows:-
"Notwithstanding the provisions of Article 3, Schedule 2 and Part 1 (sic) of the Town and Country (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), the dwelling shall not be enlarged or altered."

No appeal was lodged against the imposition of this condition.

4. Further planning applications were subsequently approved by the local planning authority for a single-storey side extension under reference 07/00349/FUL and for a single-storey pitched roofed extension under reference 08/00960/FUL.

The Case for the Appellants

5. The proposed single-storey side and rear extensions fully comply with Class A of Part 1 of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (GPDO) as amended by the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 (GPDO 2008).

6. These permitted development rights still remain, notwithstanding the provisions of condition 7 cited in paragraph 3 above, because the dwelling on the appeal site is not the building that was granted planning permission under reference F/0500/95/ROC. Therefore, the condition is of no effect because the unauthorised building has been in existence for more than four years so that enforcement action cannot be taken against the present building to restore it to a fully authorised state upon which the provisions of condition 7 could bite.

7. The deviation from the drawings approved by planning permission F/0500/95/ROC, upon which the appellants base their case, amount to changing the authorised roof, from two ridges at right angles to one another and maintaining a sloping roof plane facing the highway (which was never built), to the current roof form of a single ridge line running east to west with a gable end facing the highway.

8. These amendments to the original drawing were never formally approved by the local planning authority. They were simply changes made to satisfy the Council’s building control officers to secure compliance with the version of the Building Regulations then currently in force. Such amendments would have required the submission of a further formal planning application under the planning legislation in force in 1995.

9. Since such a permission was not granted, the building in its totality was unauthorised and became wholly lawful, shorn of the relevant condition, four years after its substantial completion. With condition 7 having no effect, the proposed side and rear additions can be erected without the need for planning permission and a LDC to that effect should be issued.

The Case for the Council

10. The local planning authority consider that the proposed extensions do not comply with Class A(d), (e)(i), (e)(ii), (h)(i) and (h)(iii) of the Schedule to the GPDO 2008. However, the Council does not want to pursue these arguments at this appeal; it wants a determination on whether condition 7 of planning permission F/0500/95/ROC is still of effect, in which case
compliance or otherwise with Class A is of academic interest only. Moreover, it was the reason given for the refusal of the LDC against which this appeal has been lodged.

11. The local planning authority considers that sufficient evidence exists to demonstrate that discussions about changes to the roof shape, as described in paragraph 7 above, took place at the time between representatives of the planning department and building control officers who were checking the rebuilding of the bungalow.

12. In particular, a letter dated May 1996 explained the roof changes. It states that a planning officer told the owner of the property that this could be approved as a minor amendment, although this was never expressly confirmed in writing by the local planning authority. No enforcement action was sought at the time against changes that were not deemed appropriate for the use of the Council’s discretionary powers.

13. In any event, the building’s footprint was not changed. Government guidance warns against taking enforcement action against technical breaches of planning control, which are otherwise acceptable. Overall, the changes to the approved development, whether formally approved or not, are not of a magnitude to question that the 1995 planning permission, to which condition 7 was attached, was not implemented. Accordingly, all of the proposed side and rear extensions require planning permission and the appeal should fail.

Reasons

14. The leading case on this particular matter is Handoll v Warner Goodman & Streat (a firm), Cook and East Lindsey DC (1994) 70 P&CR 627. In that instance, permission was given for a dwelling and garage subject to a condition that it should only be occupied by persons engaged in agriculture. The dwelling was built some 90 feet west of the approved location. The Court of Appeal held that it was materially different from the planning permission granted and so that permission had not been implemented. Overruling the High Court decision in Kerrier District Council v Secretary of State for the Environment [1981] JPL 193, the superior court held that the agricultural workers’ condition did not therefore apply.

15. A further gloss on this was given by the High Court in Wycombe DC v Williams [1995] 3 PLR 19. There, it was found that variations from approved drawings, such as in the setting out of development, were minor and did not trigger the necessity for a fresh application.

16. Taking this case law into account, first of all the date of this litigation is noteworthy. It is almost exactly contemporary with the events at Mordaunt Cottage at the time of the planning permission. I can recall that both cases were widely reported at the time, especially Handoll, and the local planning authority at least should have been aware of their implications in dealing with this matter.

17. Secondly, the facts surrounding Handoll were very different. The site of the house granted permission on that permission was some 90 feet away from where the dwelling was actually built. Unsurprisingly, the Court held that the
planning permission had not been implemented and any conditions attached to the permission were of no effect.

18. In contrast, in this instance there can be no argument that the building on the appeal site is in the right place. From the building control records that predate the planning application, it is apparent that the planning permission is retrospective for the rebuilding of an older bungalow that had effectively collapsed on the same site.

19. In conclusion, I consider that the situation is on all fours with the circumstances found in Wycombe. A change in the roof shape can be considered a slight variation to the approved development without altering the footprint of the building or, for instance, increasing the overall roof height considerably. In these circumstances, it can be treated as a minor amendment, whether formally recognised as such by the local planning authority at the time the roof alterations were made, or otherwise.

20. Accordingly, I am satisfied that planning permission F/0500/95/ROC was implemented and that condition 7 continues to have effect, notwithstanding the changes to the roof form. The impact of this condition is to take away permitted development rights granted by Class A of Part 1 of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (GPDO) as amended. As a consequence, any further side and rear additions to the present building would require planning permission and the appeal fails.

21. For the reasons given above, I conclude that the Council’s refusal to grant a lawful development certificate was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

**Formal decision**

**Appeal ref: APP/B1550/X/13/2195978**

22. The appeal is dismissed.

*Ian Currie*

INSPECTOR