



Appeal Decision

Site visit made on 13 June 2011

by K Nield BSc(Econ) DipTP CDipAF MRTPI

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

Decision date: 27 July 2011

Appeal Ref: APP/P0119/X/11/2150375

20 Fouracre Crescent, Downend, Bristol, BS16 6PS

- 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 Mrs Pamela Tadd against the decision of South Gloucestershire Council.
- The application Ref PK10/3119/CLP, dated 15 November 2010, was refused by notice dated 28 January 2011.
- 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 *"no new access required for building work, original fence posts where they exist will remain. A new connection to a drain which runs through the garden will be made, no party or shared boundary wall will be affected"*.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. The power to modify the terms of an application for a LDC is limited to s191 applications; there is no power equivalent to the provisions of s191(4) in respect of s192 applications, but those terms may be modified by an applicant. In the present case, both main parties have applied a modified description from that contained in the application. As the Council undertook its consultations on the basis of the modified description and the appellant has applied it in the appeal documentation I am satisfied that no implications would arise to other parties in this case.
2. Consequently, I am able to consider the application as modified as one for the *"proposed erection of a single storey outbuilding for use as a garage, store and workshop"*.
3. For the avoidance of doubt the planning merits or otherwise of the proposed development to which the application is made are not an issue for me to consider in the context of an appeal under s195 of the 1990 Act (as amended).

Reasons

4. The appeal site comprises part of the rear garden of the host dwelling, a semi detached property in a residential area. A scheme drawing indicates that the proposed flat-roofed building would have a slightly irregular shape to closely match the site boundaries. It would have a width varying from approximately 10.9 metres (m) at its front elevation and 11.7 m at the rear. The depth of the

building also varies from approximately 14.9 m on one side to 15.9 m on the other. The proposed building would have a series of four windows along each side and four at the rear. At its front elevation the building would contain two double doors and two windows.

5. The building would comprise two main sections. The larger part would accommodate an area termed "Electronics and Instruments" and machinery including a sheet bender, guillotine, lathe and workbench. This area would accommodate an airplane the appellant wishes to construct in the building and garaging for a car. The smaller enclosed part would house other equipment and machinery including a sliding table saw, spindle moulder, planer, pillar drill and various benches. The appellant indicates that the building would allow him to pursue a hobby of constructing airplanes and that this would not be on a commercial basis.
6. By virtue of the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), planning permission is granted for certain classes of development, described as permitted development in Schedule 2 of the amended GPDO. Part 1 of Schedule 2, which concerns development within the curtilage of a dwellinghouse, has been substantially re-cast by Article 3 and the Schedule to the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, which came into force on 1 October 2008 (referred to hereafter, taken together, as the 'amended GPDO').
7. Permitted development in Class E of Part 1 of Schedule 2 to the amended GPDO includes:-
 - "The provision within the curtilage of a dwellinghouse of -*
 - (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure, or*
 - (b) ...".*
8. However, such permission is subject to limitations, as set out in paragraphs E.1, E.2 and E.3 of Class E and paragraph E.4 provides an interpretation of the term "required for a purpose incidental to the enjoyment of the dwellinghouse as such".
9. The Council accepts that the proposed building would be "for a purpose incidental to the enjoyment of the dwellinghouse" as required by Class E (a) above and has not objected in respect of that matter. The Courts¹ have determined that the test of this limitation should include an element of "objective reasonableness".
10. In view of the proposed range of substantial engineering machinery the appellant intends to install in the proposed building and the potential impact of the intended use on the living conditions of the occupants of neighbouring dwellings mainly through noise and disturbance I do not agree with the Council's assessment. I consider that considered objectively it would not be reasonable to provide the building indicated for the purpose required.

¹ Wallington v Secretary of State for Wales (1990) 62 P.& C.R 150; and others indicated in the Encyclopaedia of Planning Law

11. Notwithstanding my view on the above matter I will now turn to consider whether the scheme meets the other limitation of Class E. The Council accepts that the proposed development would fulfill other definitions and limitations set out in paragraphs E.1, E.2 and E.3 of Class E except for the limitation contained in paragraph E.1(d)(ii) in respect of the height of the building. I have no reason to differ with the Council's view in those other respects.
12. Simply expressed that limitation requires that the height of a building situated within 2m of the boundary of the curtilage of the dwellinghouse should not exceed 2.5m. The issue in this case, therefore, is whether, in the light of the provisions of the amended GPDO, the proposed scheme would be permitted development by virtue of Article 3 and Class E of Part 1 of Schedule 2 of the amended GPDO.
13. Height of a building is defined in Article 1(3) of the amended GPDO as follows:

"Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery shall be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the highest part of the surface of the ground adjacent to it."
14. Technical Guidance has been issued by the Government to help understanding of the changes made to the GPDO, to give an explanation of the rules on permitted development for householders and how they should be applied. In respect of paragraph E.1(d) (ii) the Guidance states that:

"If any part of the building, container or enclosure is within two metres of the boundary of the area around then (sic) house, then the height limit for the whole development is restricted to 2.5 metres if it is to be permitted development."
15. In the light of paragraph E.1(d) (ii), the appellant accepts that part of the building as proposed would be located within 2m of the boundary of the curtilage of the dwellinghouse and that parts exceed 2.5 m in height. However the appellant argues that as there are parts of the site that have a higher ground level the building would not infringe the limitations if the height was measured from the highest point at ground level.
16. The Council considers that the scheme would not meet the height limitation required in E.1(d) (ii) as some parts of the building measured from the lower ground level exceed 2.5 m in height. However, the appellant has provided scheme drawings which indicate that from the highest part of the land adjacent to the building it would not exceed 2.5 m in height and he argues that it meets the limitation in paragraph E.1(d) (ii) and the Technical Guidance.
17. At my site visit it was pointed out to me by the parties that the high point of the site is a raised landscaped area across the width of the plot which appeared to be part paved patio and part rock garden. The sides of the plot were, for the most part, covered in vegetation so it was not possible for me to gain a clear indication of the height of the land in this part of the site.

18. The appellant has provided an indication of existing ground levels against the elevations of the proposed building. However, they are not indicated as being professionally surveyed or of measured accuracy. Consequently I do not consider they provide me with sufficient accuracy or certainty upon which to base my assessment of the building's height. In addition, I have concerns regarding the design being based on the most elevated part of the plot since it appears to be landscaped and surfaced with paving rather than ordinary natural ground which is found to each side of the raised area and which tends to be at a significantly lower level.
19. Circular 10/97² states (at paragraph 8.12) that in an LDC application the onus of proof is firmly on the applicant. In this case there is not persuasive evidence provided by the appellant to show with accuracy that the height of the proposed building would not exceed 2.5 m when measured from the highest part of the surface of the ground adjacent to the building. I am, therefore, unable to conclude on the evidence before me that, on the balance of probability, the proposed outbuilding would amount to permitted development.

Conclusions

20. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed erection of a single storey outbuilding for use as a garage, store and workshop was well-founded and that the appeal should fail. I have therefore exercised the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal decision

21. I dismiss the appeal.

Kevin Nield

INSPECTOR

² Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements