The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2015

by Jean Russell MA MRTPI

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

Decision date: 19 January 2015

Appeal Ref: APP/W4705/X/14/2216602
2 Glen Rise, Baildon, Shipley, BD17 5DD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Alf Sorren against the decision of City of Bradford Metropolitan District Council.
- The application ref: 14/00404/CLP, dated 30 January 2014, was refused by notice dated 19 March 2014.
- The application was made under s192(1)(a) and (b) of the 1990 Act as amended.
- The development for which a LDC is sought is described as: 'the conversion and extension of a double garage within the curtilage of 2 Glen Rise to form an annex to the house, comprising of a bedroom, bathroom and lounge. In addition a new access will be created to a single parking space. The annex is to be occupied by the families [sic] 71 year old father, so that they can keep an eye on him in his later years'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has previously sought planning permission for the conversion and extension of the garage on the site to form a single storey dwelling, and then for ancillary accommodation. Appeals relating to both proposals were dismissed.[1] For the avoidance of doubt, those appeals were considered on the basis of planning merits, which are not relevant to the questions of lawfulness before me.

3. The Council refused the LDC application on the basis of a scale 1:1250 site plan, a scale 1:500 block plan, and drawing no. A-034/10/C. The 'site edged red' on the site and block plans encompassed the whole property at 2 Glen Rise, but the site layout shown on A-034/10/C indicated a red line between the proposed annexe and existing house.

4. The documents submitted with the appeal included a statutory declaration from the appellant, dated 28 March 2014, which referred to plan no. A-034/10/C but also stated that the annexe would be 'ancillary' to the 'main residence'. The appellant submitted a revised plan with the appeal, A-034/10/D, which amended the 'red edge' line so that there would be no division between the annexe and house.

5. While it opted not to do so, the Council had an opportunity to submit a statement of case and thus comment on the appeal documents. The 'site edged red' on the revised plan tallies with that on the original site and block plans – and it is also consistent with the description of development given on the application forms,

[1] Appeals refs: APP/W4705/A/13/2193020 and APP/W4705/D/14/2219423

which refers to the curtilage of the house. It would not prejudice the Council's case for me to treat the site edged red as that shown on the revised plan.

6. The revised plan also deleted the separate access and parking space proposed to serve the annexe. Those features of the scheme are cited in the description of development; the appellant has not put forward an alternative description and I cannot amend that given. However, this is of little consequence since the outcome of this appeal does not depend upon the inclusion or otherwise of the drive.

7. The Council has granted a LDC (ref: 14/03289/CLP) for the 'construction of two flat roofed extensions to existing garage for use as domestic storage and sun room ancillary to the parent dwelling of 2 Glen Rise, Baildon'. The plan no. A-034/11 indicates that the approved extensions would have the same size and form as but fewer and different openings than the extensions proposed. I saw that trenches had been dug for the approved or proposed northwest-facing extension.

Main Issue

8. The main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class E(a) of the *Town and Country Planning (General Permitted Development) Order 1995* as amended (the GPDO).

Reasons

9. In order for an LDC to be granted under s192, it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful.

10. Under Class E(a), the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building is permitted development (PD). The proposed extensions to the appeal garage would meet the conditions set out under paragraphs E.1, E.2 and E.3, but there is a question as to whether the extensions would be required for a purpose incidental to the enjoyment of the dwellinghouse at 2 Glen Rise.

11. An 'incidental' or ancillary use is one that would *not* be considered as an integral part of a use. An incidental use is one that has a normal functional relationship with the primary use of the planning unit. The use of a domestic garage for parking or storage would normally be considered incidental to the use of a dwellinghouse, but use for primary living accommodation would be integral to the primary residential use of such a planning unit. A 'granny' annexe is normally regarded as part and parcel of the main dwellinghouse rather than incidental to it.[2]

12. The Courts have held that for an annexe to be PD under Class E(a), it must be used for a purpose incidental to the enjoyment of the dwellinghouse and not a primary residential use. The tests to be applied are whether the uses of an annexe would remain ancillary to the main use of the property as a dwelling and be 'reasonably required'.[3] The Government's *Technical Guidance: Permitted Development for Householders* advises that, in relation to Class E(a), a purpose incidental to a dwellinghouse would not cover normal residential uses, including primary living accommodation such as a bedroom or bathroom.[4]

[2] *Uttlesford DC v SSE & White* [1992] JPL 171
[3] *Rambridge v SSE & E Herts DC* (1997) 74 P&CR 126*; Emin v SSE & Mid Sussex DC* [1989] JPL 909
[4] The Technical Guidance was first issued in August 2010 to help understand changes to the GPDO made by the *Town and Country (General Permitted Development) (Amendment) (No. 2) (England) Order 2008*. It was updated in January 2013, October 2013 and April 2014. I have considered this appeal against the October 2013 guidance in place when the LDC application was made, but the relevant advice is the same in the latest version.

13. The proposed annexe would comprise primary living accommodation – a lounge, study, bedroom and bathroom. It would not include a kitchen or utility room, or therefore, all the facilities required for day-to-day living. I have already found that, notwithstanding the discrepancy in the original plans, the annexe should be treated as proposed to remain within the curtilage of 2 Glen Rise.

14. The appellant currently lives in the main house but that is to be occupied by his son, daughter-in-law and grandchildren. The appellant requires the annexe because he is elderly and widowed; he needs to live by his family for care and support, but with a degree of independence and privacy. He would take his meals and do his laundry in the main house but use the annexe for other living purposes. The Council does not dispute and there is nothing to contradict this evidence.

15. Whether or not the annexe would be served by a separate drive and parking space, I am satisfied that it would not be a self-contained dwellinghouse as suggested by the Council's reason for refusal. The annexe would be physically and functionally connected with and thus within the same planning unit as the existing dwelling. However, this finding does not assist the appellant because the annexe would nevertheless comprise primary living accommodation and this means that it would not be required for a purpose incidental to the enjoyment of the dwelling.

16. The LDC granted by the Council – as shown on the approved plan – relates to extensions to the garage for uses including garaging as well as storage space and a sun room. The reason for granting the LDC does not indicate whether the Council considered the question of use, but the development could plainly be described as reasonably required for purposes incidental to the enjoyment of the dwelling. The 'sun room LDC' does not set a precedent for this appeal.

17. Under s55(2)(e), the use of any buildings within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of land. If the sun room LDC is implemented, the appellant could use the extended garage for a different incidental purpose, so long as it would not comprise primary living accommodation.

18. The appellant may have another 'fallback' position: he could potentially implement the sun room LDC and convert the extended building, at a later date, to include living accommodation with no material change of use being involved – if the use would be part and parcel of the primary residential use of the existing dwelling and the garage would not become a separate self-contained dwelling. However, it was held in *Peche D'or Investments v SSE* [1996] JPL 311 that, given the word 'provision' in the GPDO, it is the primary intention of construction rather than intended uses which should be considered. The terms of the LDC are such that the extensions could not be built to provide living accommodation from the outset.

19. The fallback position is in any event irrelevant as to whether the proposed annexe would be lawful. I conclude that the appellant has failed to show on the balance of probabilities that the development would be permitted by Article 3, Schedule 2, Part 1, Class E(a) of the GPDO. Despite the error in their reason for refusal, the Council's decision to refuse to grant a LDC was well-founded and the appeal fails.

Other Matters

20. The appellant suggested that, if deleted from the scheme, planning permission would not be required to reinstate the proposed drive and parking space. Any operational development – or even the carrying out of internal works to the garage, such as installation of a kitchen – could be enforced against if undertaken to facilitate a material change of use. This finding adds weight to my view that a grant of a LDC for an annexe should not lead to use of the building as a separate

dwelling.[5] Equally, however, and with regard to all other matters raised, my overall conclusion stands that the proposed development would not be incidental to the enjoyment of the existing house.

Jean Russell

INSPECTOR

[5] The restrictive covenant would not suffice under planning legislation to prevent the annexe from becoming a separate dwelling and indeed did not prevent the appellant from making the previous planning applications.