
Appeal Decision

Site visit made on 2 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 7 March 2022

APP/L3245/X/21/3283108

Cherry Orchard Farmhouse, Tuckhill, Six Ashes, Bridgnorth WV15 6EW

- 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 by Shropshire Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Dennis Hodgetts.
- The application, reference 21/AP01321/CPE was received on 15 March 2021. It was refused by a notice dated 19 March 2021.
- The development for which a certificate of lawful use or development was sought is for the existing use as a conservatory that was granted permission in 1997. It is to be replaced with an oak framed garden building which due to its size is in accordance with the GDPO (2015 - As amended Class A - enlargement, improvement or other alterations of a dwelling).
- The application was made under section 192(1)(a) of the Act for a certificate of lawfulness for the existing use of the conservatory and under section 192(1)(b) for the replacement garden building.

Summary of decision: A certificate of lawfulness is not issued.

Appeal conservatory and proposal

1. The Appellant, Mr Dennis Hodgetts, intends to replace the existing conservatory built on to the southern façade of the detached house at Cherry Orchard Farmhouse, Tuckhill, with a new oak framed building. He described it as a garden building. *N.B. Mr Hodgetts and the Council variously referred to the compass bearing of this façade of Cherry Orchard Farmhouse as the south facing wall and the south-east facing wall. That may be because it is almost south-southeast facing. But for consistency and simplification, this wall is referred to in this decision as the south facing wall. Other external walls are north, east or west facing.*

Appellant and Council cases

2. Mr Hodgetts maintained that the new building would meet all the limitations attached to Class A, (enlargement, improvement or other alteration of a dwellinghouse), of Part 1, (Development within the curtilage of a dwellinghouse), Schedule 2, (Permitted development rights), of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, (the Order).
3. The block plan submitted with planning application 97/0219 showed a layout similar to that seen in a 1970's aerial photograph. Positions of doorways into the house were indicated. A porch on the south elevation appeared to show

access into a kitchen from outside. Entrances into the dwelling from the eastern road side and from the west into the central hall were provided. Mr Hodgetts said they would have been the primary entrances into the dwelling.

4. Mr Hodgetts said the plans attached to application BR/APP/FUL/00/0457 showed that from the then existing and proposed layouts, the main entrance into the house was from the east. During their consideration of that application, the Council had not questioned that view.
5. The Council said there were 3 matters upon which the proposed new garden building would fail to meet permitted development criteria outlined in Schedule 2, Part 1, Class A.1 to the Order.
6. First, the garden building would not comply with limitation A.1 (e)(i) and A.3(a) - the enlarged part of the dwellinghouse would extend beyond a wall which — (i) forms the principal elevation of the original dwellinghouse. That was because the Council considered the south elevation, (where the proposed garden room would be sited), to have been the principal elevation of the original dwelling house, ("Original" here means: in relation to a building, existing on 1st July 1948, as existing on that date; 2.-(1) the Order). The Council said the east and west facing walls had been side elevations of the original dwellinghouse.
7. Secondly, condition A.3(a) to Class A would not be met, (the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse).
8. Also, the proposed retaining wall to support the extended patio would be operational development outwith the limits of the Order.

Inspector's considerations

9. That part of the application for a certificate of lawfulness for the use of the existing conservatory was, as the Council pointed out, otiose. Planning permission for the erection of the conservatory was granted on 19 May 1997 under reference BR/97/0219. It appears the conservatory was built in accordance with that permission. The lawfulness of the existing conservatory is confirmed by the 1997 planning permission. No useful purpose is seen in issuing a certificate of lawfulness to that effect.
10. The first of the 3 points of non-compliance with the Order concessions according to the Council, (para. 6 above), was whether or not the proposed garden building complies with limitation A.1 (e)(i) - the enlarged part of the dwellinghouse would extend beyond a wall which — (i) forms the principal elevation of the original dwellinghouse. That depends on which party was right in determining whether the south or the east facing wall of the house was the principal elevation of the original dwelling house - the pre-1948 layout of the house.
11. Where the principal elevation it is not obvious, a combination of the factors may be used to identify the principal elevation. They are: location of main door; windows; relationship to road; boundary treatment and architectural

ornamentation. It is unlikely that any single factor will be decisive. There can only be one principal elevation.

12. Mr Hodgetts's 1970s aerial photograph of Cherry Orchard Farmhouse provides perhaps the best available indication of its original layout. No earlier photographs or plans of this altered and extended house were submitted. The aerial photograph shows the south facing wall with a window at first floor level, a porch with a window facing south, and a south facing window in the small building attached to the eastern side of the house. It shows a wall along the eastern side of the house close to the road that turns 90° to the west, joining the south-eastern corner of the porch on the southern façade. The wall appears to have been an edge to a path to the porch that ran from the eastern wall access through from the road. Mr Hodgetts said the plan attached to application 97/0219 showed a similar layout to the 1970s photograph. That plan is poorly reproduced. However, the porch on the southern façade and the path wall suggest a main door into the house. The openings in the internal walls are also unclear. But I think it unlikely the porch failed to provide access into the whole house.
13. The block plan said to be circa 1979 shows no porch, but there were doorways into the house from the west and from the east and through the small building on the eastern side of the house. The BR/APP/FUL/00/0457 application plan again shows access into the house from the west and east. However, perhaps significantly, the 1970s photograph does not appear to show any paths up to the house on the east or western sides.
14. On balance, I consider the Council were right to conclude that the southern façade of Cherry Orchard Farmhouse was the principal elevation of the original dwelling house.
15. Even if that determination could be changed by adducing clearer evidence, Mr Hodgetts's project fails to satisfy condition A.3(a) to Class A to Schedule 2, Part 1, (the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse). This question was not addressed by the Appellant. Cherry Orchard Farmhouse has red brick walls with white uPVC windows. The roof is covered with red tiles. However, the garden room would have a red sandstone plinth, a visible oak frame, oak fascias and soffits, black framed windows, black bi-fold doors and a tiled mansard roof, with a large flat roof light. Those finishes would be different to those on the existing house. Compliance with limitation A.3(a) would not be achieved.
16. There is also a proposed retaining wall to support a new patio extending outwards from the southern and western sides of the garden room. The patio may not be essential to the construction of the garden room. But it is intended to be an integral part of the project. It would amount to an engineering operation as defined by s.55(1) of the Town and Country Planning Act not permitted by the Order.
17. Permitted development rights only apply when the development fully accords with all the limitations set out in the Order. The case of *Garland v MHLG [1968] 20 P&CR 93* is authority for that position.

Conclusion

18. Where a lawful development certificate is sought, the onus of proof is on the appellant. The standard of proof is the balance of probabilities. In this instance it was not shown that the construction of a replacement garden room and patio would be development permitted by Class A to the Order.

FORMAL DECISION

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the construction of an oak framed garden building to replace the existing conservatory at Cherry Orchard Farmhouse, Tuckhill, Six Ashes, Bridgnorth WV15 6EW was correct and that the appeal should fail. I exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR