
Appeal Decision

Site visit made on 9 May 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 04 July 2016

Appeal Ref: APP/W5780/X/16/3144330

209 Ley Street, Ilford, Essex IG1 4BL

- 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 Interface Properties Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 1711/15, dated 29 April 2015, was refused by notice dated 7 December 2015.
 - 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 a single storey rear extension.
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Decision: The appeal is dismissed.

Procedural Matters

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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 shall refuse the application. 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 Certificate of Lawful Use or Development (LDC) was well founded.
 2. The description of the proposed development does not indicate what the use of the existing building is. In determining an appeal against the issue of an enforcement notice in January 2013 (APP/W5780/C/13/2193430), the Inspector concluded as a matter of fact and degree that the ground floor use fell within Class B1a (office) rather than Class A2 of the Use Classes Order. However, I note that both the appellant and the Council have assessed the current proposal against the provisions of Class A of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) and I have similarly determined the appeal on this assumption.
 3. The enforcement notice referred to above remains in force and had not been complied with at the time of my visit. The main parties clarified that the extension for which a certificate of lawfulness is sought is a different extension to the one that the notice requires to be demolished.
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Main Issue

4. The extension or alteration of a shop or financial or professional services establishment is permitted by Class A, Part 7, Schedule 2 of the GPDO, subject to the limitations set out at Class A.1. One of these limitations, as set out at Class A.1.(c), is that the development is not permitted if (i) (aa) any part of the development (other than an alteration) is on land which adjoins other premises which are used for a purpose falling within any of the classes in Part C (residential premises or institutions) of the Schedule to the Use Classes Order and (ii) is within 2 metres of any boundary of the curtilage of the premises.
5. The appeal property is a terraced building with an office on the ground floor and a residential use of the upper floors. The adjoining property to the south (No 207) is similarly configured whereas the adjoining building to the north (No 211) is wholly in residential use.
6. The development proposed is a new extension and not an alteration to the existing building. Of the adjoining properties, one is wholly and the other partly in a use that falls within Part C (residential premises or institutions) of the Schedule to the Use Classes Order. The proposed extension would be constructed on the boundary with both of those properties and therefore would be within 2 metres of any boundary of the curtilage of the appeal premises. The proposed development would therefore not comply with the limitations set out at Class A.1 (c) (i) (aa) and (ii), Part 7, Schedule 2 of the GPDO.
7. Accordingly, on that ground alone, the proposed development does not constitute permitted development.
8. In addition to the limitation at Class A.1 (c), development is not permitted under Class A.1 (a)(ii) if the gross floorspace of the original building is exceeded by more than 50% or 100 square metres (whichever is the lesser). The Council indicates that the gross floorspace of the original building is some 48.3 square metres. The appellant disputes that figure on the basis that it does not include the first floor but does not provide an alternative figure. In any event, the interpretation of Class A, Part 7 set out at A.3 of the GPDO makes it clear that a building, or part of a building, used for any purpose within Class A2 includes buildings with other uses in other parts as long as the other uses are not within the parts being extended. It follows that the floorspace of the upper floors should not be included in the calculation of the original floorspace for the purposes of the application.
9. The application drawings show the proposed extension together with previous extensions to the property as being 74.38 square metres, this being shown in hatching on the drawings. The Council has applied the whole of this 74.38 square metres in arriving at the conclusion that the proposed extension fails to comply with the limitation at Class A.1 (a)(ii).
10. The appellant explains that the proposed extension is indicated by additional cross hatching on the application drawings and therefore only amounts to a proportion of the total 74.38 square metres shown on those drawings. The appellant contends that the proposed extension results in only an additional 25 square metres of gross floorspace being created. However, the appellant has provided no details of the calculation from which that figure is derived, including in relation to the gross floorspace of the original building.

11. On the basis of the figure of 48.3 square metres for the gross floorspace of the original building, which in my view relates to the relevant part of the original building, the increase of 25 square metres resulting from the proposed extension exceeds the maximum of 50% specified in Class A.1 (a)(ii). Although the floorspace of the original building would not be exceeded by the maximum of 100 square metres of floorspace also set out there, it is quite clear from the structure of Class A.1 (a)(ii) that is the lesser of the figures of either 50% or 100 square metres that is the maximum allowed. The proposed extension therefore also fails to comply with Class A.1 (a)(ii) in that respect.
12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey rear extension at 209 Ley Street, Ilford, Essex IG1 4BL 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 as amended.

Paul Freer

INSPECTOR