
Appeal Decision

Site visit made on 29 November 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 9 December 2016

Appeal Ref: APP/N5090/X/16/3148470

8 Alberon Gardens, London, NW11 0AG

- 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 Mr Stephen Kaufman against the decision of the Council of the London Borough of Barnet.
- The application Ref 16/0830/192, dated 8 February 2016, was refused by notice dated 14 April 2016.
- 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 basement under the existing house and 3m beyond existing rear wall.

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue is whether the proposed basement would have been lawful at the date on which the application was made, that is, on 8 February 2016. In an appeal such as this the planning merits of the proposed development do not fall to be considered.

Reasons

2. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
 3. Class A of Part 1 of Schedule 2 to the GPDO permits the enlargement, improvement or alteration of a dwellinghouse subject to a number of specified conditions, exceptions and limitations all of which have to be satisfied to enable a LDC to be granted. The matters in dispute in this appeal are A.1(k)(i) which says that development is not permitted if the proposal would consist of or include the construction or provision of a raised platform.
 4. The land slopes away from the back of the house and there are currently steps down to the grassed area from a patio. The submitted drawings do not show
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an existing derelict shed/hut adjacent to the patio and close to the boundary with No 10 that would be demolished. The ground level of this building is some 1m below the patio level¹. The drawings show that the proposed basement would result in an extension of the existing patio at the rear of the house to one side of the steps (the east) and a reduction the other (the west)². The new 'patio' would form the roof of the proposed basement some 3m beyond the rear elevation of the house and the drawings show that the patio level would be minus 410.00mm and that the garden level would be minus 1310.00mm (sic)³. There would be windows facing the garden between the garden level and the 'patio' level.

5. The Technical Guidance⁴ advises that 'a raised platform is any platform with a height greater than 0.3 metres' and the proposed basement in this appeal would include a raised platform with a greater height than that tolerance. The proposed basement would therefore not have been lawful when the application was made because it would not be permitted development.

Conclusions

6. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a basement under the existing house and 3m beyond existing rear wall 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.

Decision

7. The appeal is dismissed.

Gloria McFarlane

Inspector

¹ Measured on site

² Drawing No 8/PO/600A and 8/601

³ Drawing No8/602

⁴ Permitted development for householders DCLG April 2016