

Appeal Decision

Site visit made on 8 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 10 January 2017

Appeal Ref: APP/F5540/X/16/3152748

5 Kingswood Avenue, Hounslow, London TW3 4LL

- The appeal is made by Jackie Murray under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Hounslow to grant a lawful development certificate.
 - The application Ref: 00669/5/LAW1, dated 7 April 2016, was refused by notice dated 3 June 2016.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is "the erection of a part first floor rear extension to the house".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which I consider would be lawful if begun at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the operations would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 3. The proposed extension would be 3 metres deep and would be set in from the boundaries of the house curtilage by 2 metres. It would be well over 7 metres from the curtilage boundary opposite the rear wall of the house.
 4. The Council refused the application, as they considered the proposed extension would not be permitted development, because of the limitations in Class A.1(i) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class A.1(i) states that the enlargement of a dwellinghouse is not permitted if "the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres".
 5. The proposed extension, on its own, would not be within 2 metres of the boundary. However, it would be built over part of an existing ground-floor extension and the Council treated the term "the enlarged part" in Class A.1(i)
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as including that extension, with the result that the limitations on distance from the boundary and height would not be complied with.

6. This interpretation of “the enlarged part” was generally considered to be correct when the Council made their decision on 3 June 2016. However, a few days later, on 15 June 2016, the High Court reached a different conclusion in the case of *Hilton, R (on the application of) v Secretary of State* [2016] EWHC 1861 (Admin). In *Hilton*, the house had an existing part-one/part-two-storey rear extension. Prior approval was then sought for a further single-storey extension. The application was refused on the basis that the proposed extension would not be permitted development because, together with the previous extension, “the enlarged part” would exceed the tolerances in Classes A.1(f) and (g). The Court, however, held that “the enlarged part” here referred to the proposed extension on its own. The Court then went on to consider the term “the enlarged part” in Class A.1(i) and held that the same interpretation applied here as well.
7. The High Court’s decision is declaratory of the law as it has been since the 2015 Order came into force on 15 April 2015. The fact that the Council’s decision was made before the High Court’s decision is therefore of no consequence. Applying the High Court’s interpretation to the current appeal, “the enlarged part” refers solely to the operations now proposed, which are not in conflict with Class A.1(i) or with any of the other limitations in Class A.1.
8. I have therefore concluded that the operations would be lawful if begun at the time of the application for the certificate. I am satisfied that the Council’s refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR