
Appeal Decision

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: 10 January 2017

Appeal Ref: APP/M5450/X/16/3155078

21 Bell Close, Pinner, HA5 2AQ

- 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 Jeyaraj Nadarajah against the decision of the Council of the London Borough of Harrow.
- The application Ref P/3858/15, dated 12 August 2015, was refused by notice dated 22 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 the construction of a single storey rear extension to create a space for dining and playroom.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The application was made on the basis of a proposed operation pursuant to s.192(1)(b) of the 1990 Act¹. It would however appear from the Council's Report and the Appellant's grounds of appeal that the single storey rear extension has been built. I will determine the appeal on this basis and on the basis that, given the nature of the appeal, it was not necessary for any site visit to be undertaken.

Main Issue

2. The main issue is whether the proposed single storey rear extension² would have been lawful at the date on which the application was made, that is, on 12 August 2015. In an appeal such as this the planning merits of the proposed development do not fall to be considered.

Reasons

3. 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 as amended (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.

¹ Parts 7 and 8 of the application

² Or indeed the constructed single storey rear extension

4. 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. Single storey extensions, extending beyond the rear of the original house by more than 4m and less than 8m if a detached house, or by more than 3m and less than 6m in any other case, are subject to a neighbour consultation scheme for the impact of the proposed development on the amenity of their property³.
5. The requirements of the neighbour consultation scheme are that householders wishing to build a larger extension have to notify the local planning authority about the proposed extension and the local planning authority must give adjoining neighbours notice of the proposals and the opportunity to object, that is, an application for prior approval⁴. Works cannot commence until the local planning authority notifies the householder that no prior approval is required, or gives prior approval, or 42 days have passed without any decision by the local planning authority. Works must be completed by 30 May 2019 and the local planning authority must be notified of their completion⁵.
6. It is apparent from the Council's Report, the notice of refusal and the Appellant's appeal statement that prior approval was granted for a single storey rear extension some 6m deep at the appeal property in accordance with the GPDO⁶. I do not know the date on which prior approval was granted nor do the documents I have state which plans were approved in the grant of prior approval. The notice of refusal in this appeal refers to the existing single storey rear extension not matching that approved and the Appellant acknowledges in his grounds of appeal that the development that is the subject of this appeal deviates from the approval in a number of respects. These were that the roof was amended; the doors and windows in the rear elevation were rearranged; a large window was installed in the flank elevation; and the approved two roof lights were reduced to one. There are therefore material differences between the two schemes.
7. I have two plans which are entitled 'Proposed Ground and First Floor and Front, Side and Rear Elevation'. Both plans are dated June 2015 and both have the same drawing number – 2048/AJ/02. Neither has any revisions noted. The differences between the two plans are those amendments referred to by the Appellant.
8. No prior approval was sought by the Appellant for this amended proposed development. The need for prior approval is worded as a pre-commencement condition on the permitted development right and there is no provision for a retrospective application for prior approval. Therefore, if the prior approval procedure has not been completed by the date of the application for a LDC the proposed development cannot fall within the permitted development right and it cannot be lawful. This is the case whether there is neighbour support or lack of objection to the scheme. It therefore follows that the appeal must fail.
9. I have noted the contents of an email dated 4 April from a Council Officer to the Appellant in which it is 'recommended that the certificate is approved' but this is not a formal approval and the Council was not bound by it. The Council's formal decision is contained in the notice of refusal.

³ Permitted development for householders DCLG April 2016

⁴ Condition A.4

⁵ Condition A.4 and Permitted development for householders DCLG April 2016

⁶ Ref: P/3024/15

Conclusions

10. 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 construction of a single storey rear extension to create a space for dining and playroom 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

11. The appeal is dismissed.

Gloria McFarlane

Inspector