

Appeal Decision

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 13 February 2017

Appeal Ref: APP/T5720/X/16/3157446

24 Stroud Road, Wimbledon Park, London SW19 8DG

- 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 Nicholas Waring on behalf of Ren Wei Ma against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P2605, dated 21 June 2016, was refused by notice dated 10 August 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 described as ground floor full width rear extension (a) 3m beyond rear wall (b) 3.3m maximum height (c) 3m eaves height.
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Decision

1. The appeal is dismissed.

Preliminary Matter, Background, and Main Issue

2. The application form for the certificate of lawful development (LDC) is undated so in the banner heading above I have used the date the Council received it.
3. No 24 is a single family mid-terraced dwellinghouse. The proposed development is a ground floor, full width rear extension which the appellant considers to benefit from planning permission granted under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO). This much appears from the description of the proposed development in the banner heading above, which specifies relevant maximum tolerances in the GPDO. However the application includes detailed drawings that must also be considered as part of the proposal.
4. The main issue to consider is whether the Council's decision to refuse the LDC irrespective of the wording of the reason for refusal, was well-founded.

Reasons

5. The application was refused as the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 3m, contrary to GPDO Schedule 2, Class A.1, paragraph (f), sub-paragraph (i).
 6. There are three rear walls of the original dwellinghouse which, in order of increasing depth, consist of: the rear wall of the house that looks onto a side
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- return area (the main rear wall), the rear wall of the two-storey outrigger, and the rear wall of a wc projecting from the outrigger but not across its full width.
7. The submitted plans show that the rear elevation of the new extension would be unarticulated which therefore means that the extension goes back to the various rear walls of the original dwelling at varying depths. Whilst it would extend no more than 3m from the original rear walls of the wc or outrigger projections, it would extend more than 3m from the original main rear wall.
 8. Both parties refer to government guidance¹ (TG) published to assist in the application and interpretation of the GPDO. It advises at page 19 that where the original rear wall of a house is stepped (as in this appeal), then "each of these walls will form 'the rear wall of the original dwellinghouse'" and the limits on extensions "apply to any of the rear walls being extended beyond". A diagram on page 19 illustrates how an extension could meet the requirements.
 9. The appellant correctly identifies as less relevant to his proposal the example (also on page 19) of development that is not permitted. However a further diagram on page 24 of the TG shows how an extension similar to that proposed will fail to meet GPDO requirements, notwithstanding that its rear elevation is no more than 3m from the deepest of the original rear elevations.
 10. The example on page 24, as with the proposed extension, results in a void between the original rear main wall and the extension beyond. However it is irrelevant whether or not that part of the extension is physically attached to the rear main wall. The key principle it seems to me is found in the first diagram on page 19, namely that each of the stepped walls will form the rear wall of the original dwellinghouse from which separate measurements must be taken in relation that part of the new extension which projects from it, whether physically attached or not (as in page 24).
 11. Applying these principles it is clear that the part of the new extension that is to be measured from the original rear main wall would exceed 3m from that wall, and so not be permitted by sub-paragraph (i) of paragraph (f) of Class A.1.

Other Matter

12. Due to the inset in the side return there is a slight overlap in the widths of the original main rear wall and the outrigger's rear wall, such that it might be uncertain from which wall the 3m should be measured out therefrom. The Council has applied the more restrictive measurement from the main rear wall. No further details are supplied but it is unnecessary to decide the point as, even if the 3m were to be measured from the outrigger for this very small overlap the extension as a whole would still fail to comply with the GPDO.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed development was well founded. I will exercise the powers transferred to me in s195(3) of the Act and dismiss the appeal.

Grahame Kean

INSPECTOR

¹ The DCLG Permitted Development for Householders: Technical Guidance 13 April 2016