

Appeal Decision

Site visit made on 14 February 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/G5180/X/16/3150516

43B Hilldrop Road, Bromley BR1 4DB

- 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 Anthony Gradley against the decision of the London Borough of Bromley.
 - The application Ref 15/03474/PLUD, dated 12 August 2015 was refused by notice dated 19 November 2015.
 - The application was made under section 191(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 garage measuring 2.5m in height, 4.3m in depth and 3m in width.
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Decision

1. The Appeal is dismissed.

Background information

2. The property is an end of terrace, two-storey dwelling, in a row of three. The houses are built offset (from a bend) on Hilldrop Road and are served by private driveways. When constructed in the 1960s the three properties had integral garages but the one in the appeal dwelling has since been converted into habitable living space. A condition attached to the original planning permission for the three properties indicated that *'the whole of the area in front of the entrance porches and garages shall be paved and used as access road and turning space and no development whether permitted by the Town and Country Planning (General Development) Orders 1950 to 1960, or not, shall be carried out on that area of land'*. The appeal garage although built on the land has not affected access to any of the properties and is set forward of the front of No 43B.

3. The Council's reason for refusing to issue a LDC was as follows: *'The proposal as submitted would not constitute permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015, as it would be situated on land forward of a wall forming the principal elevation of the original dwelling house'*. The relevant part of Class E is E.1(c) which indicates that development is not permitted if *'any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original property'*.

4. The Technical Guidance: Permitted Development for Householders - DCLG 2014 (TGPDH) gives advice on what should be regarded as the *'principal elevation'* and states: *'In most cases the principal elevation will be that part of the house which fronts (directly or at an angle) to the main highway serving the house...It will*

usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually but not exclusively, the principal elevation will be what is understood to be the front of the house'.

Reasons

5. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reason(s) are well-founded. The planning merits of the case do not fall to be considered and the relevant test relating to submitted evidence is *'the balance of probability'*. The question to be asked in this case is whether or not the Appellant has shown that the operational development carried out (the construction of the garage) was lawful on the date the application was made in that it constituted permitted development.

6. The Appellant indicates that his property is a substantial distance from the highway, being around 20m plus away and that, between his property and Hilldrop Road, there is the forecourt and access land to the two intervening houses at Nos 43 and 43A. It is also noted that the front of No 43B faces the sided elevation and garden of No 45. It is argued, therefore, that this cannot be a situation whereby a *'principal elevation'* fronts a highway.

7. Whether a property fronts a highway is a matter of fact and degree depending on the facts of the case. However, the Appellant's arguments on this point are misplaced. All of the matters raised, regarding remoteness and/or relationship to the highway, could be relevant to development permitted under Class A of the GPDO (*'the enlargement, improvement or other alteration of a dwelling house'*). However, the arguments put forward in this case are not directly relevant since it is Class E against which the works carried out must be considered.

8. Class E gives permitted development rights to *'the provision within the curtilage of a dwelling house of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwelling house...'* Class E makes no reference to 'highways'. In considering whether or not a development is permitted under Class E, it matters not where a highway might be located, What matters under E.1(c) and what is critical is whether the development is situated on land forward of a wall which forms the *'principal elevation'* of the property.

9. A *'principal elevation'* need not always be one which fronts a highway. Whilst the TGPDH indicates that *'In most cases the principal elevation will be that part of the house which fronts (directly or at an angle) to the main highway'*, it also makes other references to what might constitute the *'principal elevation'*. For example it states *'It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house'* and in addition states, *'Usually but not exclusively, the principal elevation will be what is understood to be the front of the house'*. Thus, each situation has to be considered on its merits.

10. Having seen No 43B within the terrace and from all of the submissions, (including plans and photographs), I do not consider that there can be any doubt as to what is the 'front' of the house (or for that matter the fronts of 43 and 43A). The front clearly includes the main ground and first floor windows (the main architectural features) and the entrance porch (albeit the door is at the side) which look out on to the paved access area. The rear of the house opens into the garden and there is also a side garden area. In my view, therefore, and as a matter of fact and degree it is the frontage which faces across the paved access areas, to the side elevation of No 45, which is the *'principal elevation'* of No 43B.

11. The garage, as built, is well forward of this '*principal elevation*' to the house and cannot, therefore, constitute permitted development under Class E.1(c). Planning permission is required for such development and I consider, therefore, that the Council's decision not to issue a LDC was well founded and the appeal fails.

Other Matters

12. In reaching my conclusions I have taken into account all of the other matters raised by the Appellant and the Council. These include the initial appeal documents; the appeal statements; the submitted plans and the Appellant's final comments in response to the Council's statement. However, none of these carries sufficient weight to alter my conclusion that a LDC should not be issued for the garage as built and that the appeal should be dismissed.

Anthony J Wharton

Inspector