
Appeal Decisions

Inquiry held on 24, 25 & 26 January 2017

Site visit made on 25 January 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 06 March 2017

Appeals concerning 15 Gayton Crescent, London NW3 1TT

- The appeals are made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against refusals to grant a certificate of lawful use or development (LDC) and against the failure to determine an application for an LDC.
 - The appeals are made by Mrs Galway-Cooper against the Council of the London Borough of Camden.
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Appeal A: APP/X5210/X/16/3148353

- The application Ref 2015/5288/P, dated 16 September 2015, was refused by notice dated 8 December 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 "construction of a 3 storey rear south east corner extension to extend the family room on the lower ground floor and the reception room on the raised ground floor and to create a bathroom on the first floor".

Summary of Decision: The appeal is dismissed

Appeal B: APP/X5210/X/16/3160682

- The application Ref 2008/4730/P, dated 30 September 2008, was refused by notice dated 24 December 2008.
- 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 "creation of rear extension".

Summary of Decision: The appeal is invalid and no further action is taken

Appeal C: APP/X5210/X/16/3165517

- The application Ref 2013/7388/P, dated 18 November 2013, was refused by notice dated 4 March 2014.
- 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 "demolition of existing rear kitchen extension and construction of new rear bathroom, reception and kitchen extension".

Summary of Decision: The appeal is dismissed.

Appeal D: APP/X5210/X/16/3161902

- The application Ref 2014/1374/P, dated 19 February 2014 was not determined when the appeal was lodged.
- 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 vertical extension of existing rear WC extension”.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. At the Inquiry an application for costs was made by the Council against Mrs Galway-Cooper. This application is the subject of a separate Decision.
2. At the outset of the inquiry an application for an adjournment was made by the Advocate for the Appellant for several reasons including that he had been instructed very late in the day, that the inquiry documents could be rationalised and that a delay would have the advantage of giving the Council the opportunity of considering the consequences of requiring demolition. I declined to do so as it is not in the public interest to delay proceedings unnecessarily; the Appellant could have engaged help earlier; and I did not find the documentation unmanageable. The third reason advanced for adjourning is an entirely separate matter unconnected to these appeals.
3. All oral evidence to the inquiry was given on oath.

Appeal A

4. On an application made under s191 of the Act, the time to consider whether a building operation is lawful is at the time of the application (s191(4)). Section 191(2)(b) is clear that such operations cannot be lawful if they constitute a contravention of any of the requirements of any notice then in force. That is the case here. At the time of the application the subject of Appeal A, 16 September 2015, there was an enforcement notice in force requiring the demolition of the rear extension. The rear extension is in contravention of that requirement. Neither the application, nor this subsequent appeal could succeed.
5. The Appellant’s argument that the extension was permitted development, built with the benefit of planning permission granted by way of the Town and Country Planning (General Permitted Development) Order (GPDO) 1995, should have been brought as an appeal against the enforcement notice on ground (c) that there has not been a breach of planning control. She did not do so and the notice, unchallenged in relation to this matter, came into force. Section 285(1) of the Act says the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
6. My view that the appeal could not succeed due to the operation of s191(2)(b) was accepted as correct by the Advocate for the Appellant. Rather than withdrawing the appeal, however, he asked that it nonetheless be determined but confirmed that he would be bringing no evidence to contradict my finding.
7. I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the “construction of a 3 storey rear south east corner extension to extend the family room on the lower ground floor and the reception room on the raised ground floor and to create a bathroom on the first floor” 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.

Appeal B

8. Section 195 of the Act enables appeals to be made against refusal or failure to give a decision on applications made under s191 or s192. Section 195(1) says the “applicant may by notice appeal to the Secretary of State” which is the same as the wording for s78 appeals. At the inquiry, I drew attention to the commentary in the Encyclopedia of Planning Law and Practice in relation to s78 which says “The right to appeal is, however, limited to the applicant, even where the applicant is not the owner of an interest in the land. Thus there is no third party right of appeal, and the fee-simple owner has no independent right of appeal”.
9. The applicant in Appeal B was Mr J Pardoe and none of the documentation associated with the application suggests otherwise. The Advocate for Mrs Galway-Cooper said he was instructed that Mr Pardoe had been acting as her agent and he made a passing reference to “Agency Law” but nothing further added.
10. It is clear that Mrs Galway-Cooper has no right of appeal in this case. The appeal was not validly made and I shall take no further action with it.

Appeal C

The issue in dispute

11. The main issue in this appeal is whether, at the time of the application, that is 18 November 2013, the existing rear extension to which this appeal relates was lawful in that it benefitted from being permitted development as defined in Part 1 of Schedule 2 to the GPDO and granted permission by way of Article 3. Even if successful in relation to this matter the Appellant accepts that circumstances have since changed in that an enforcement notice, referred to above in Appeal A, came into force on 19 December 2014.
12. At the inquiry there was no dispute that it is first necessary to consider of what the development comprises, before assessing whether that development meets the limitations and conditions set out in the GPDO. In this respect the Appellant argues that the rear extension (the subject of this appeal) at the south east corner of the house was constructed as a separate building operation from the adjoining rear staircase extension and in turn that was constructed separately from the small WC extension adjoining that to the north. The Council and Rule 6 Party, on the other hand, argue that the three are components of a single building operation.
13. All parties were agreed that if the latter argument proves correct then the extension would not have been permitted, whether it was commenced before or after 1 October 2008 when the GPDO was amended.¹ It is accepted that whether one applies the limitations and conditions in force before or after that date the rear additions, if taken to comprise a single building operation, would

¹ The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 brought about significant changes to the limitations and conditions set out in Part 1 of Schedule 2 governing permitted development within the curtilage of a dwellinghouse.

not have met them and hence the development would not have been permitted development.

14. If the Appellant is right and the south east rear extension was a separate, discrete operation, then the issue of whether the development was commenced before or after 1 October 2008 would be relevant. Assessed on its own, the Appellant argues the south east rear extension would have met the limitations and conditions set out in Class A of Part 1 of Schedule 2 of the GPDO in force before 1 October 2008 whereas it would not have met them following the revisions to Part 1 made on that date.²

Separate developments?

15. At the inquiry, and despite the attendance of the Appellant, no evidence was presented from anyone with first-hand knowledge of the way in which the rear of the property was extended. Mr Galway-Cooper, who gave evidence on behalf of his wife, said he had not visited the site between 1 August 2008 and some time in 2009. He had not watched or noted the progression of the work on the site. His evidence was, however, that the builder, Mr Pardoe, had constructed the extension to the rear south east corner first which had possibly been finished by Christmas and that there might then have been a lull of a couple of weeks over the holiday period following which Mr Pardoe continued with the next stage, the central staircase addition. The toilet addition at the northern end of the rear elevation followed. All three had been constructed by 2009 and Mr Pardoe left the site before the end of 2009. Mr Galway-Cooper said there had been work going on for all the time that Mr Pardoe had been on site.
16. The reason given on behalf of the Appellant as to why the rear of the property had been extended in three stages was solely to protect the structural integrity of the house. There was no suggestion that the intention had been to build one smaller extension (for example the rear south eastern addition) and then, once that was completed, a fresh project to add another extension to it had been devised. Indeed quite the opposite was demonstrated. The evidence was that the intention had been to build the south east and staircase additions together but that, in the event, it had to be executed in stages to protect the existing building. That is not evidence of separate and discrete building operations.
17. Despite the Inspector in the previous appeal on this site stating that the south east corner extension is a "structurally separate element" from the staircase addition, this is quite clearly not so. The two are divided only by an internal partition wall and have always been so. Furthermore, Mr Galway Cooper agreed that, externally, toothed brickwork had been left on the northern edge of the south east addition to enable the staircase addition to be tied into it - thus continuing the new rear wall across the back of the property. That is not evidence of two entirely separate extensions.
18. I am aware that the previous appeal Inspector considered whether it was necessary to deal with the rear extensions as a whole or whether they could be considered separately, but that was in the context of s177(1)(a) of the Act which enabled him to grant permission for the development in whole or in part.

² The Rule 6 Party does not accept this.

He was not assessing whether each part constituted a separate development or building operation.

19. Whilst Mr Galway-Cooper said it was decided to add the toilet addition at the northern end of the rear elevation later in 2009, there is nothing to suggest that this was added after building operations on the other parts of the rear additions had been completed. Indeed as with the south eastern addition, Mr Galway-Cooper said toothed brickwork had been left at the end of staircase addition to enable the toilet addition to be added and tied in and that a temporary door had been installed to the side until the toilet was added. Photographs taken in 2013 show the staircase extension unfinished with the toilet extension present.³
20. Mr Sunpower, a builder and the only other witness appearing for the Appellant, had not been engaged until the beginning of 2013 and that was to finish the off the project which had stalled because of lack of funds. The rear additions had already been built when he arrived on site. His evidence was limited to agreeing that, from conversations with his client, a chance on-site conversation with Mr Pardoe, and his own observations, the additions had been built in stages but as different phases of one operation.
21. There is ample evidence that the rear of the property was extended in a single building operation (albeit necessarily in stages to ensure stability) and that the whole comprises a single development. The Appellant has not discharged the burden of proof to demonstrate otherwise. That being the case, and as was accepted by all parties at the inquiry, assessed as a single building operation the development would not have met the limitations and conditions of Class A of Part 1 of Schedule 2 to the 1995 GPDO whether as in force before or after 1 October 2008 so as to benefit from being permitted development. There is, therefore, no need to go on to consider whether the development was commenced before or after 1 October 2008 as that would not change the outcome.
22. For the reasons given I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "demolition of existing rear kitchen extension and construction of new rear bathroom, reception and kitchen extension" 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.

Appeal D

23. At the time of the application, that is 19 February 2014, the previous appeal Inspector had not granted planning permission for the existing WC extension which in this application it was proposed to extend. In my consideration of Appeal C, I have found it to form part of a single building operation which was not permitted development applying the conditions and limitations of Class A of Part 1 of Schedule 2 to the GPDO and was thus unlawful. Article 3(5) of the GPDO says "The permission granted by Schedule 2 (that is permitted development) shall not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful" and Article 1 clarifies that "building"

³ Pages 112-114 of the appendices submitted by the Rule 6 party

includes any part of a building. Thus as the existing extension was not lawful at the time of the application, it could not have been extended as permitted development by way of the GPDO.

24. For this reason given I conclude that the Council's decision, following the submission of this appeal against non-determination, to refuse to grant a certificate of lawful use or development in respect of the proposed "vertical extension of existing rear WC extension" 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.
25. Although subsequently the previous appeal Inspector granted planning permission for the existing WC extension so that it was no longer unlawful; it still could not be extended using permitted rights since those were removed by way of a condition attached to that permission.

Appeal A: APP/X5210/X/16/3148353

26. The appeal is dismissed.

Appeal B: APP/X5210/X/16/3160682

27. The appeal was not validly made and no further action is therefore taken.

Appeal C: APP/X5210/X/16/3165517

28. The appeal is dismissed.

Appeal D: APP/X5210/X/16/3161902

29. The appeal is dismissed.

Bridget M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Horton QC

He called

Mr P Galway-Cooper

Mr A Sunpower

Husband of the Appellant

Builder

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Ostrowski

He called

Mr G Bakall

of Counsel

Planning Enforcement Manager

FOR THE GROUP OF LOCAL RESIDENTS (RULE 6 PARTY):

Mr D Stone

DOCUMENTS submitted at the Inquiry

- 1 Letters of notification of appeal and inquiry
- 2 Letter dated 7 January 2017 from the Gayton Residents' Association
- 3 Undated representation from the Heath and Hampstead Society
- 4 Opening submissions on behalf of the Council with attachments
- 5 Screen shots of two planning enquiries made on 10/09/2008 & 13/10/2008 submitted by the Council
- 6 E mail correspondence with FlexiStore submitted for the Appellant
- 7 Closing submissions for the Council
- 8 Closing submissions for the Group of Local Residents