
Appeal Decision

Site visit made on 27 February 2017

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: 13 March 2017

Appeal Ref: APP/A5270/X/16/3161776
51 Claremont Road, London, W13 0DJ

- 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 Robert Coomber against the decision of the Council of the London Borough of Ealing.
- The application Ref 164271CPL dated 19 August 2016, was refused by notice dated 25 October 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 a ground floor rear extension.

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue in this appeal is whether the proposed development would have been lawful at the date on which the application was made, that is, on 19 August 2016. In an appeal such as this the planning merits of the proposed development and matters raised by the Appellant such as the decision by the Council in another lawful development certificate application in respect of another property and the Council's reference to an appeal decision concerning extensions to a house do not fall to be considered.

Reasons

2. 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 land¹. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
3. Class A of Part 1 of Schedule 2 permits the enlargement, improvement or other 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. The exception and limitation pursuant to which the Council refused

¹ S.57 of the 1990 Act

the application is A.1(f)(i) which says that development is not permitted by Class A if the enlarged part of the original dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse or 3 metres in the case of any other dwellinghouse. There is no definition of 'dwellinghouse' in the GPDO and 'original' for the purposes of Class A means a building as existing on 1 July 1948 or if built after that date, as built² and 'a building' includes any part of a building.

4. The Technical Guidance³ advises that "Where the original rear wall of a house is stepped, then each of these walls will form 'the rear wall of the original dwellinghouse'. In such cases, the limits on extensions apply to any of the rear walls being extended beyond" and an example is shown on a plan of a semi-detached house with an original 'stepped' rear where each of the extensions (shaded) would meet the requirements for a single storey extension as they do not extend more than 3 metres beyond the rear wall (or until 30 May 2019 more than 6 metres, except on article 2(3) land or sites of special scientific interest where the 3 metre limit remains in place).
5. There is no dispute that the rear of the dwellinghouse comprises the original building⁴. The Appellant says that the measurement should be taken from the rearmost point of the masonry and fascia board of the loggia and kitchen roof. However, as I saw on my visit and whilst I accept that the masonry is substantial, it does not form any part of the rear wall of the dwelling and nor do the fascia board and roof. Taking the Guidance into account I consider that the rear of No 51 is stepped and the rear walls, which are walls directly opposite the front of the house, are the kitchen wall and what is the dining room wall. The proposed extension⁵ would be stepped and would extend some 1m and slightly under 3m from the kitchen wall and some 4.3m⁶ from the dining room wall and it would therefore not be permitted development.

Conclusions

6. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a ground floor rear 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.

Decision

7. The appeal is dismissed.

Gloria McFarlane
Inspector

² Article 2 (1) of the GPDO

³ CLG – Permitted development for householders (April 2014) pages 17-19. The Guidance refers to the previous GPDO but for the purposes of this appeal there have been no relevant amendments to Class A

⁴ Drawing No 451-20 Existing plans and elevations

⁵ As shown on drawing no 451-10 Proposed extension and alterations

⁶ The depth of the loggia some 1.5m and the proposed extension of some 2.8m