



Appeal Decision

Site visit made on 13 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 19 April 2017

Appeal Ref: APP/F5540/X/16/3157462

22 Rosebery Road, Hounslow TW3 2RE

- 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 Alpesh Makwan against the decision of the Council of the London Borough of Hounslow.
 - The application ref 00957/22/LAW1, dated 20 July 2016, was refused by notice dated 26 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 development is sought is building of rear extension.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded.
3. No. 22 is a terraced property. The proposal comprises operational development involving erection of a single-storey rear extension and a porch. The chorus of disagreement is whether the rear extension would benefit from a deemed planning permission by virtue of Article 3(1) to the Town and Country Planning (General Permitted Development) (England) Order 2015. Classes of development described as permitted development ['PD'] are set out in Schedule 2. Part 1, Class A of that Schedule grants planning permission for development within the curtilage of a dwellinghouse comprising enlargement, improvement or other alteration subject to exceptions and conditions set out in paragraphs A.1 – A.4. For development to comprise PD, it must satisfy all tolerances, conditions and limitations. The phraseology clearly indicates that these rights focus on prospective development.
4. The enlarged part of the dwellinghouse is the part which is proposed within Class A as the enlargement¹. In principle, the enlargement is permitted where it concerns a dwelling, as defined, unless it is subject to one of the exceptions in paragraph A.1. When assessing what comprises the relevant operational development in the enlargement pursuant to Class A, it is necessary and reasonable to consider the development on a holistic basis. It would be important to consider what is the particular operational development proposed in considering whether that development, as a whole, falls within the scope of Class A PD rights.

¹ See *R (oao Hilton) v Secretary of State for Communities and Local Government* (official Court transcript cites *Secretary of State for Home Department*) [2016] EWHC (Admin).

5. Essentially, Mr Makwan submits that the rear extension would project 3 metres from each part of the rear wall to the original dwellinghouse; it would be stepped to reflect the layout of the dwelling as originally built and less than 4 m in height. He submits that the development would be PD. The Council argue that the development would contravene paragraph A.1(j) subsection (iii). For the following reasons, I disagree with Mr Makwan's submissions.
6. Exception A.1 (j) states that development is not permitted by Class A if –
The enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse², and would –
 - (i) exceed 4 metres in height,*
 - (ii) have more than a single storey, or*
 - (iii) have a width greater than half the width of the original dwellinghouse.*

Having regard to the ordinary meaning of the words in paragraph A.1(j), the test indicates a straightforward comparison between the proposed enlargement of the dwellinghouse with any side wall of the original dwellinghouse to see whether it would extend beyond it. If it does, then the exception will apply. If the enlargement would exceed 4 m in overall height, or be more than one storey or if it would have a width greater than half the width of the original dwellinghouse, then it would fall outside the scope of PD. If, on the other hand, the enlarged part does not extend beyond any side wall of the original dwellinghouse, this exception is not triggered. There is nothing absurd about applying the test in that manner nor does such an approach fly in the face of common sense.

7. A wall forming a side elevation will be any wall that cannot be identified as being a front or rear wall to the house. The dwelling's rear elevation is not formed by a single plane as it is stepped. It includes a two-storey rear projection that forms an original outrigger; the latter includes side and rear walls. The submitted details show building operations would result in the demolition of the ground floor element of the outrigger; the residual space incorporated in the enlarged part of the dwelling. However, at first floor level the outrigger would remain in place and form a side wall. Consequently, the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse. Exception A.1(j) is therefore triggered.
8. Physical tolerance set out in paragraph A.1(j) subsection (i) and (ii) would be satisfied. However, the extension would extend the entire width of the rear elevation of the original dwellinghouse. Subsequently, it would have a width greater than half the width of the original dwellinghouse. Subsection (iii) would be contravened because of the rear extension's overall width. I have seen nothing in the Department's technical guidance to suggest my approach is incorrect³.
9. On the particular facts and circumstances and on the balance of probabilities and evidence now available I am satisfied that the proposed building operations comprising erection of a single-storey rear extension would not be lawful if instituted or begun at the time of the application.
10. I conclude that the Council's decision to refuse the LDC was well-founded. The appeal should not succeed.

A U Ghafoor

Inspector

² See Article 2(1) to the relevant General Permitted Development Order cited above.

³ *Permitted development for householders, technical guidance*, April 2016, and in particular pages 23 to 28.