
Appeal Decision

Site visit made on 26 April 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 24 May 2017

Appeal Ref: APP/Y5420/X/16/3163070
82 Elm Park Avenue, London N15 6UY

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Mrs Shulamis Lowin against the decision of the Council of the London Borough of Haringey.
 - The application no: HGY/2016/2561, dated 23 March 2016, was refused by notice dated 15 September 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: First floor rear extension.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 23 March 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. At my site visit I saw that the building has undergone works to add an additional storey. However, it is the building as it existed at the time of the application, and the circumstances at that time, that are relevant to this determination.
 3. Whilst the description of the development adopted by the Council in its decision notice, and given by the appellant on the appeal form, is "first floor rear extension" the application plans (which show only a section of the proposal) indicate that what is being proposed is, in fact, (at least in part) a two storey rear extension. From the existing floor plans and elevations it appears the property, at the time of the application, was a simple two storey end of terrace dwellinghouse. There is no indication that there was any pre-existing single storey rear extension. I shall deal with the appeal accordingly.
 4. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.
 5. The burden of proof in an LDC appeal is upon the appellant. The test of the evidence is one of balance of probability.
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Main issue

6. The main issue in this appeal is whether the decision to refuse the LDC was well founded.

Reasons

7. The Council's decision notice states that the proposal is not permitted development under Class A to Part 1¹ of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) [hereafter "GPDO"]. It does not, however, specify any particular limitations or conditions of Class A under which it considers the proposal to fail.
8. The appellant considers the proposal is permitted development. The appellant's only argument is that the next door boundary is more than 15m away from the appeal site address.
9. From the very limited information that is before me from either party in this appeal I deduce that the matter of contention between the parties concerns limitation A.1(i) which states that an enlargement cannot be permitted development if *"...the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres"*.
10. Notwithstanding the burden of proof that is upon the appellant to show that the development is lawful in all relevant respects, I have no particular reason to doubt that the development would not accord with the other Class A limitations. I shall, therefore, focus upon A.1(i) for the purposes of the determination.
11. The height of the eaves (at least in part) exceeds 3 metres. Because A.1(i) refers to "the enlarged part of the dwellinghouse" it is the extension as a whole, not just the part that exceeds 3 metres eaves height, that needs to be 2 metres or more from the side boundaries.
12. The Location Plan which accompanied the application, which shows the site edged red, indicates that the side boundaries ran in alignment with the north facing side elevation and the party wall with number 80. I have no reason to question that the red line depicted the boundary of the dwelling curtilage at that time.
13. Whilst I do not have a plan which shows the footprint of the proposed extension it is likely that it would have been positioned within 2 metres of one or both of these side boundaries when taking into account the relatively limited width of the plot and the extremely constrained accommodation that, otherwise, would have resulted.
14. Reference has been made to the land which adjoins the application site to the north. At my site visit this land appeared to be in use for builders' storage. It had scaffolding upon it erected to the side elevation of number 82. On the Location Plan a building is shown on this land with the annotation "*El Sub Sta*".

¹ Part 1 of Schedule 2 to the GPDO concerns "Development within the curtilage of a dwellinghouse". It provides for the carrying out of such development as permitted development subject to conditions and limitations.

15. I have no further information about this land. I have not been told whether it has been acquired by the appellant, when the *El Sub Sta* building was demolished, when any former use of the land ceased, whether the land has ever been used in connection with the domestic use of number 82 and/or whether planning permission has been granted for such use.
16. If this land did comprise part of the legitimate dwelling curtilage at the time of the LDC application then a wider extension under GPDO rights may have been possible because the boundary of the curtilage of the dwelling would have been further to the north. However, there is insufficient evidence on this point, and when also taking into account the contradictory evidence as indicated on the Location Plan, I cannot conclude on balance of probability that the land to the north did comprise part of the dwelling curtilage at the time of the LDC application such that the northern boundary of the curtilage was further away.
17. I consider it more likely than not that the enlarged part of the dwellinghouse would have been positioned within 2 metres of one or both of the side boundaries of the curtilage of the dwellinghouse as depicted on the Location Plan. The development would have failed to meet limitation A.1(i). The burden of proof that is upon the appellant to demonstrate otherwise, and also to show that the development accords with all of the other relevant limitations of Class A to Part 1 of Schedule 2 to the GPDO, has not been satisfactorily discharged. The appeal cannot succeed.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a rear extension (two storey or part two storey) was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR