
Appeal Decision

Site visit made on 5 June 2017

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

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

Decision date: 08 June 2017

Appeal Ref: APP/Q5300/X/16/3163896

25 Ladysmith Road, Enfield, EN1 3AJ

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use or Development ("LDC").
 - The appeal is made by Martin Malinski ("the Appellant") against the decision of the Council of the London Borough of Enfield ("the Council").
 - The application Ref 16/01761/CEA, dated 22 April 2016, was refused by notice dated 20 June 2016.
 - The application was made under Section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is a single-storey rear extension ("the Rear Extension") and alterations to the existing raised patio.
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Application for costs

1. An application for costs was made by the Appellant against the Council. This application will be the subject of a separate Decision.

Main Issues

2. I consider the main issues are whether the Rear Extension and the alterations to existing raised patio would be permitted development.

Reasons

The Rear Extension

3. The Appellant's argument is that the Rear Extension is permitted development.
4. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") allows for the enlargement of a dwelling-house. No. 25 is a dwelling-house within a terrace of similar dwellings. A.1 of Class A explains that development is not permitted by Class A if, amongst other things, the enlarged part of the dwelling-house would be within 2m of any boundary of the curtilage of the dwelling-house and the height of the eaves of the enlarged part would exceed 3m.
5. The Order explains that unless the context otherwise requires, any reference in the Order to the height of a building is to be construed as a reference to its height when measured from ground level. Ground level means the level of the surface of the ground immediately adjacent to the building in question.
6. The Department for Communities and Local Government have published Technical Guidance entitled "Permitted development rights for householders" ("the Technical Guidance").

7. The Technical Guidance explains that references to height (for example, the heights of the eaves on a house extension) are the height measured from ground level. Further, it goes on to explain that ground level is the surface of the ground immediately adjacent to the building in question, and would **not include any addition laid on top of the ground such as decking** (my emphasis).
8. The Rear Extension as shown on the plan entitled "Proposed Section 1" ("the Section 1 Plan") would be:
 - a) Within 2m of the boundary of the curtilage of No. 25.
 - b) 2.92m above the height of the existing concrete patio ("the Existing Patio").
9. I do not consider that the top of the Existing Patio is the correct level at which to assess the height of the Rear Extension. The Order refers to the surface of the ground immediately adjacent to the building in question. Accordingly, the height of the Rear Extension should be measured from the ground level underneath the Existing Patio. The height of the Existing Patio was measured on site at about 0.24m above the level of the adjoining ground. If this height is added to the height stated on the Section 1 Plan i.e. 2.92m the height of the Rear Extension to eaves level would be about 3.16m.
10. I therefore conclude that the Rear Extension cannot be permitted development pursuant to the Order because its height would exceed 3m.

Alterations to Existing Patio

11. The Section 1 Plan stated that the Existing Patio area is to be raised to form a flush threshold with the finished floor level of the main house and would be less than 300mm ("the Proposed Patio").
12. I do not consider that the proposed alterations to the Existing Patio are alterations to the dwelling-house at No. 25 because the patio is outside the dwelling-house and not part of it. Accordingly reference to a verandah, balcony or raised platform in Class A of the Order is not appropriate.
13. The alterations to the Existing Patio would in my judgement comprise the provision within the curtilage of the dwelling-house of a hard surface. There is no evidence before me that the Proposed Patio would be used for any purpose or purposes other than uses incidental to the enjoyment of the dwelling-house.
14. I therefore conclude that the alterations to the Existing Patio would be permitted development granted by Class F of the Order.

Overall Conclusions

15. For the reasons given above I conclude that:
 - a) The Council's refusal to grant a LDC in respect of the 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.
 - b) On the evidence now available, that the Council's refusal to grant a LDC in respect of the proposed alterations to the existing raised patio was not well-founded and that the appeal in respect of that should succeed. I will

exercise the powers transferred to me under Section 195(2) of the 1990 Act.

Decision

16. The appeal in respect of the Rear Extension is dismissed.
17. The appeal in respect of the proposed alterations to the existing raised patio is allowed and attached to this Appeal Decision is a LDC describing the proposed operation which is considered to be lawful.

Tim Belcher

Inspector



Lawful Development Certificate ("the LDC")

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991) ("the 1990 Act")

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 April 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to the LDC, would have been lawful within the meaning of Section 191 of the 1990 Act, for the following reason:

The proposed operations would be lawful because no enforcement action could be taken against them if they had been carried out because the proposed alterations would be permitted development pursuant to Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 and those operations do not constitute a contravention of any requirements of any Enforcement Notice then in force.

Signed: *Tim Belcher – Inspector*

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First Schedule

The proposed alterations to the existing raised patio as detailed on the plans submitted with the application.

Second Schedule

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NOTES

The LDC is issued solely for the purpose of Section 192 of the 1990 Act.

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

The LDC applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from those described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the LDC is subject to the provisions in Section 192(4) of the 1990 Act which state that the lawfulness of specified operations are only conclusively presumed where there has been no material change, before the operations are begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the LDC dated: 08 June 2017

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