
Appeal Decision

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2018

Appeal Ref: APP/M5450/X/17/3179441
2 Moat Drive, Harrow, London HA1 4RX

- 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 Tariq Annon against the decision of the Council of the London Borough of Harrow.
 - The application, Ref P/1559/17, dated 3 April 2017, was refused by notice dated 3 July 2017.
 - 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 described as 'Single storey rear extension, hip to gable conversion incorporating a side facing window, provision of box dormer on rear elevation and provision of two roof lights on the front roof slope'.
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Decision

1. The appeal is dismissed.

Background

2. The appeal relates to a two storey, end of terrace house. A Notification for Prior Approval (Ref P/5229/16/PRIOR) was submitted to the Council for a single storey rear extension on 2 November 2016. The forms stated that the proposed maximum height of the extension would be 4m and the proposed maximum height of the eaves would be 3m. The plans submitted with the Notification were amended to clarify that the height of the roof and the eaves were to be in accordance with the stated dimensions on the Notification form. No objections were received and thus Prior Approval was not required.
3. A Certificate for a Proposed Lawful Use or Development (LDC) (Ref P/3071/17) was granted on 15 September 2017 on the basis of the plans and details agreed for the Prior Approval scheme, (Ref P/5229/16/PRIOR).
4. On 8 March 2018 the appellant advised that the excavations are due to start imminently for a rear extension.

Procedural Matters

5. The application sought is an LDC for a *proposed* (my emphasis) development, not that which is currently being built on site. The purpose of an application made under section 192 of the Town and Country Planning Act 1990 (the Act) is to find out whether *future* development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time

of the application. It is on this basis that I have determined whether the development shown on the appellant's drawings would be lawful.

6. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
7. Applying the terms of Section 192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes A, B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The appeal is confined to the narrow remit of reviewing the Council's decision as to whether it was well-founded or not well-founded.

Reasons

8. The Council has determined that the proposed single storey rear extension would comply with the limitations set out in paragraphs A.1(a)-(k) of Class A of the GPDO. However, as the extension would be over 3m in depth, a detail dealt with in paragraphs (f) and (g) of Class A, the planning permission given by Class A is subject to a condition set out in paragraph A.4. This requires a developer to go through a Prior Approval Notification procedure before development can begin on site.
9. The Council's view is that the proposed single storey rear extension would not be lawful as the details of the extension shown on the plans accompanying the LDC application materially differ from the details submitted for the previous Prior Approval Notification. These differences are in terms of its overall height and eaves height, which are less than that shown on the amended prior approval plans. The appellant submits that the inconsistencies are minor.
10. The Council accepts that in all other respects, the proposed development would accord with the limitations set out in Classes B and C of the GPDO and I see no reason to take a different view.
11. Generally speaking, the notional question being asked when submitting an application for a LDC is whether future development would be lawful. However, for proposed single storey rear extensions over 3m in depth, the notional question is more specific. In these circumstances the purpose of the LDC is to ascertain whether the extension permitted in the Prior Approval process would be lawful. In order for the Council to make this determination it is necessary to submit either, the approved 'prior approval' plans and details with the LDC application or the same approved information on another drawing, if drawings have been subsequently amended. The appellant has not submitted the same information.
12. When considering whether a development is lawful or not, the first step is to assess the development against the limitations in paragraphs A.1.(a)-(k) of Class A. Provided these are not contravened then development is permitted. However, single storey rear extensions over 3m in depth are only permitted development subject to a condition, which is set out in paragraph A.4. of Class A. If the condition is not complied with then the development is not permitted. Thus to consider whether the development is lawful for the purposes of a LDC

determination, both ambits of Class A, namely paragraphs A.1. and A.4., need to be satisfied.

13. For these reasons it is imperative that the same information from the Prior Approval process is used for the LDC application otherwise it is not possible to state whether the development is lawful or not. This is because it is necessary to consider whether both ambits of Class A have been satisfied. It would appear that the appellant accepts this approach. This is because he states within the LDC application form that a certificate should be granted as 'The rear extension has been subject of a Prior Approval Consultation where no objections have been raised'.
14. However, I find that the drawing submitted for the LDC application is not the same as the drawing and details submitted for the Prior Approval notification though it is similar. This is because the height of the extension is shown to be 'Approx 3800' and the height of the extension in the Prior Approval notification is 4m. The appellant's view that this is a minor point overlooks the advice in the Planning Practice Guidance relating to the submission of LDC applications¹. This states proposals need to be described with sufficient clarity and precision. I consider this is particularly the case when seeking permitted development where the relevant legislation is detailed and exact.
15. The LDC drawing is therefore imprecise and ambiguous as it contains the word 'Approx' and shows the maximum height to be '3800', whereas the height of the extension in the Prior Approval Notification is 4m. The use of the word 'Approx' also means that the eaves height is unclear. As the drawing is ambiguous and lacks precision it is not categorically the same as the Prior Approval scheme. As such, it is concluded that the proposed single storey rear extension would not be lawful as it would not accord with paragraph A.4.(11)(b) of Class A, Schedule 2, Part 1 of the GPDO.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of development described as 'Single storey rear extension, hip to gable conversion incorporating a side facing window, provision of box dormer on rear elevation and provision of two roof lights on the front roof slope' 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.

D Fleming

INSPECTOR

¹ Planning Practice Guidance paragraphs Ref ID: 17c-005 and 006-20140306