
Appeal Decision

Site visit made on 18 April 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2018

Appeal Ref: APP/H5960/X/17/3181943

130 Heythorp Street, London, SW18 5BU

- 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 Ms Denie Vickers against the decision of the Council of the London Borough of Wandsworth.
 - The application no: 2017/2207, dated 18 April 2017, was refused by notice dated 27 July 2017.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Construction of single storey rear extension and rear roof extension above rear addition.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operations which are considered to be lawful.

Preliminary matters

2. The description of the development on the appeal form ("rear pod roof extension and single storey rear extension") is different from that given on the original application form (which is set out in the final bullet point above). The original description adequately describes the proposal and was, essentially, that adopted by the Council in its decision (albeit slightly amended). I shall, therefore, determine the appeal on the basis of the original description.
3. Whilst the matter of contention between the parties concerns only the roof extension the proposal that is before me also includes a single storey rear extension. I shall consider each element of the proposal separately.
4. Permitted development rights for householders: Technical Guidance (Department for Communities and Local Government, April 2017) [hereafter "the Technical Guidance"] explains that, in order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. Any proposed householder development should be considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission (page 8). In respect of the single storey rear extension Class A¹ is the only relevant class.

¹ Class A to Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "the GPDO"] provides for: The enlargement, improvement or other alteration of a dwellinghouse as permitted development subject to limitations and conditions.

Insofar as the roof extension is concerned the parties have focussed only upon the limitations of Class B².

5. The roof extension extends upwards upon the structural walls of the existing property, enlarges a bedroom and creates additional floorspace at first floor level. These factors raise the question of whether the proposal should also be considered against the criteria of Class A. However, there is no evidence before me on the point. The issue is one of fact and degree in any particular case and, in its consideration of the proposal and its officer's report, the Council did not appear to find it necessary to make an assessment against Class A in respect of the roof extension. I shall, therefore, focus upon the single point in contention which is whether the roof extension complies with the condition at B.2(a) of Class B.
6. The relevant date for this determination of lawfulness is the date of the LDC application i.e. 18 April 2017. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. As there has been no material change in the relevant legislation and guidance since that date I shall, for ease of reading, write in the present tense.
7. In an LDC appeal the burden of proof is upon the appellant. The planning merits of the proposed development do not fall to be considered. The decision is made only on the basis of relevant planning law.

Main issue

8. The main issue is whether the Council's decision to refuse an LDC was well founded.

Reasons

The single storey rear extension

9. The single storey rear extension is positioned to the rear of the existing single storey outrigger. I understand the outrigger to be part of the original dwellinghouse. In other words the rear elevation of the original dwellinghouse is stepped.
10. The Technical Guidance explains (page 20) 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. A diagram illustrates the point. On this interpretation the extension does not extend beyond what is permitted by Class A.
11. The dimensions of the extension are within the limitations of Class A, and the extension complies in all other respects with the limitations and conditions of Class A. It is common ground between the parties that the extension is permitted development under Class A.
12. Thus, I find that the single storey rear extension would have been lawful if carried out on the application date.

² Class B to Part 1 of Schedule 2 of the GPDO provides for: The enlargement of a dwellinghouse consisting of an addition or alteration to its roof, as permitted development subject to limitations and conditions.

The rear roof extension

13. In respect of the rear roof extension, there is no dispute that the development complies with the limitations and conditions of Class B, apart from in respect of condition B.2(a). This condition states that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
14. The roof extension has a brickwork finish to its rear and south facing elevations to match the brickwork of the host property. Its north elevation, which is set in from the existing outrigger eaves, is hung with roof tiles to match the roof of the host property.
15. Condition B.2(a) refers to the materials of the existing "dwellinghouse" and not the "roof" specifically. To my mind a roof extension which has external materials of brickwork and tile hanging, both of which match the brickwork and tiles of the existing dwellinghouse, cannot do other than comply with B.2(a) when applying a literal meaning.
16. The Council has drawn attention to the Technical Guidance which (at page 36) explains that condition B.2(a) is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. As an example, it states that the materials used for facing a dormer window should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level.
17. Whilst the Technical Guidance does not have the force of law it should, as a general rule, be followed unless the Courts have given a different interpretation. However, I do not find its guidance on B.2(a) to be particularly relevant or helpful in respect of the appeal proposal which is not a "loft conversion" and neither can it reasonably be described as a "dormer window". The guidance does not cover the appeal circumstances of an enlargement which extends upwards from the external walls of the existing property replacing (almost entirely) the existing lean-to roof of the outrigger and rising to a higher level. The example which the Technical Guidance gives of a dormer window is clearly distinguishable from the circumstances that are at issue in this appeal. I therefore defer to the wording of B.2(a) in itself.
18. Even if, beyond the literal meaning of B.2(a), objective judgement is called for in my view the simple use of matching brickwork to extend (upwards) an existing brickwork wall, to the height of the original stepped back part of the brick rear wall, serves the purpose of minimising visual impact and results in an extension that is sympathetic to the existing house insofar as its materials are concerned.
19. I find, therefore, that the roof extension would have complied with condition B.2(a) and, thus, would have been lawful if carried out on the application date.

Other matter

20. I have been referred to a number of other LDC applications where (I am told) brickwork (rather than tiles) has been accepted by the Council for the facings of roof extensions. I have, however, made this decision on the basis of the particular facts and circumstances of the case that is before me.

Conclusion

21. For the reasons given above I conclude, in the particular circumstances of this case and on the basis of the evidence that has been submitted, that the Council's refusal to grant an LDC in respect of the construction of a single storey rear extension and rear roof extension above rear addition was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the Act.

Susan Wraith

INSPECTOR

Lawful Development Certificate

APPEAL REFERENCE APP/H5960/X/17/3181943
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 18 April 2017 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reasons:

1. The proposed single storey rear extension would have been permitted development under Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. The proposed rear roof extension above the rear addition would have been permitted development under Class B to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Susan Wraith

INSPECTOR

Date: 30 May 2018

First Schedule

Construction of a single storey rear extension and rear roof extension above rear addition.

Second Schedule

130 Heythorp Street, London, SW18 5BU

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
 2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
 3. This certificate 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.
 4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.
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Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 May 2018

by Susan Wraith Dip URP MRTPI

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Scale: Not to scale



