
Appeal Decision

Site visit made on 9 July 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 12 July 2019

Appeal Ref: APP/T5150/X/19/3221119

9 North Way, London, NW9 0RD

- 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 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Kailash Punja against the decision of the Council of the London Borough of Brent.
- The application Ref 18/4027, dated 11 October 2018, was refused by notice dated 19 December 2018.
- The application was made under section 192(1)(b) of the Act.
- The proposed development for which a LDC is sought is described as "Existing conservatory to be demolished and it is proposed to build 6m extension, from back of existing wall running parallel with boundary line, approx. 100mm away. Maximum height 3m from original ground level".

Summary of Decision: The appeal is dismissed

Preliminary matters

1. Where an LDC is sought the burden of proving relevant facts rests with the appellant, and the test of the evidence is on the balance of probability. The relevant date for determining lawfulness is 11 October 2018, the date of the application.
2. The proposed rear extension subject of the appeal was previously submitted to the Council for a determination as to whether prior approval would be required (Council ref: 18/3164). The Council's decision was that its prior approval was not required. However, the appeal and matter before me relates solely to the refusal of the LDC as set out in the banner heading above. For the sake of clarity, I point out that I have determined the appeal on the basis of the existing and proposed plans submitted with the LDC application to the Council.
3. Section 191(2) of the Act states that operations are lawful at any time if (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not contravene any requirement of an enforcement notice then in force.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on the point of dispute between the parties as to whether or not the proposed extension would benefit from the planning permission (referred to as "permitted development") granted by Article 3 and Schedule 2,

Part 1, Class A, of Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

Reasons

5. No. 9 North Way is an extended two storey semi-detached dwellinghouse. At the rear the original dwellinghouse is stepped across ground and first floor levels such that there are two rear walls, one being stepped further back than the other linked by a projecting wall of approximately 1.5m. This 1.5m wall is central to the main issue in dispute.
6. There is no disagreement between the parties, other than in respect of Class A.1(j)(iii), that the proposed extension would satisfy all of the limitations of Class A.1.
7. Class A.1(j)(iii) 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 dwellinghouse, and would have a width greater than half the width of the original dwellinghouse.*
8. The Technical Guidance¹ (TG) to the GPDO explains, with diagrams, that a wall forming a side elevation will be any wall that cannot be identified as being a front wall or a rear wall. In this context the 1.5m two storey projecting wall is clearly not a front or rear wall. It is the side wall of the rearmost part of the dwellinghouse. Given its length I consider that it is not shallow or an insignificant element of the building's design. As such, I find that it is a wall forming a side elevation of the original dwellinghouse.
9. The TG also explains that it is the width of the original dwellinghouse *at its widest point* that should be used to calculate the *half width* limitation of an extension. The proposed extension would extend across most of the full width of the original dwellinghouse and thus would exceed this limitation.
10. It should also be noted that if a proposed extension would extend beyond the line of an original side elevation, but that side elevation would be demolished as part of the proposed development, the restrictions in A.1.(j) would still apply. This is because the limitations to permitted development are based on the original dwellinghouse and apply even if part of the original is removed.

Conclusion

11. The proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse, and would have a width greater than half the width of the original dwellinghouse. Hence, it would not be permitted development.
12. For all the above reasons, I conclude that the Council's refusal to issue an LDC was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.
13. The appeal is dismissed.

Thomas Shields

INSPECTOR

¹ Permitted development rights for householders Technical Guidance, DCLG April 2017