



Appeal Decision

Site visit made on 26 July 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal Ref: APP/U5930/X/18/3219387

124 Marmion Avenue, Chingford, London E4 8EH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (hereinafter "certificate").
 - The appeal is made by Mr Bambos Avraam against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref. 183000, dated 29 August 2018, was refused by notice dated 24 October 2018.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 4 of the application form as "*Erection of single storey side extension. Demolition of existing garage*".
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operation which is considered to be lawful.

Matters of clarification

2. Unfortunately, I was not able to attend the site visit that had been arranged because of severe delays on my train journey to London. I carried out an unaccompanied site visit later the same day. I was able to see the site satisfactorily and I have sufficient information to determine the appeal.
3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.

Main issue

4. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

5. No. 124 is a two-storey, semi-detached house. Situated on a corner plot, the house adjoining it on the north-eastern side is no. 1 Middleton Avenue. It is proposed to demolish a flat-roofed, single storey garage attached to its south-

western side and replace it with a single storey extension with a mono-pitched roof. This would provide a study and a dining room, have a similar width to the garage and extend across the full depth of the two-storey flank wall.

6. The main issue turns on whether the proposed extension would have amounted to permitted development at the time of the application.
7. At that time, subject to various limitations, Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permitted within the curtilage of a dwellinghouse the enlargement, improvement or other alteration of a dwellinghouse. The Council maintains in its decision notice that the proposal does not constitute permitted development as there would be a failure to comply with the limitation at paragraph A.1(e) (ii) in Class A.
8. Development is not permitted by Class A if:
 - (e) *the enlarged part of the dwellinghouse would extend beyond a wall which—*
 - (i) *forms the principal elevation of the original dwellinghouse; or*
 - (ii) *fronts a highway and forms a side elevation of the original dwellinghouse.*
9. There is no dispute that the proposed extension would extend beyond a wall which forms a side elevation of the original dwellinghouse. Rather, the matter in contention is whether this elevation fronts a highway (Marmion Avenue). The appellant says that *"The application site is a corner property with main elevation facing the junction of Marmion Avenue and Middleton Avenue. The proposed side extension ... does not directly face the main road in its entirety due to its angled location."* The Council considers that *"... the elevation would be within 45 degrees and would not be a sufficient distance from the highway. The proposal would be easily seen from the public highway."*
10. The Department for Communities and Local Government's publication *Permitted development rights for householders – Technical Guidance* (TG) gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Where the TG clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case. In the relevant guidance in the TG for the limitation at paragraph A.1(e) (ii) it says:

"The extent to which an elevation of a house fronts a highway will depend on factors such as:

 - (i) *the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;*
 - (ii) *the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway."*
11. The use of the words *"such as"* would suggest that these are not the only factors. Each case needs to be assessed as a matter of fact and degree. Having examined the site plans and location plan with a protractor, I have reached the

view that whilst the angle of the front elevation to Marmion Avenue is just under 45 degrees, the subject side elevation actually subtends an angle of just over 45 degrees to the same road. The latter measurement is the relevant one and it suggests to me that the scheme would accord with the first indicative factor in the TG.

12. On a plain reading of the TG, I consider that once the angle of 45 degrees is exceeded, then the elevation will not normally be considered as fronting a highway and the distance between the house and the highway will be of little relevance. The second indicative factor in the TG, for example, may permit a side extension at, say, 20 degrees to a public road but set back a long way from it or separated from it by other land in different ownership. I have also noted that slightly more than half the depth of the proposed side extension would face directly towards the side boundary with no. 126, rather than directly towards the highway boundary. This counts in the appellant's favour too.
13. In the light of the above and having taken into account all other matters raised, I judge on the balance of probabilities that the proposed single storey side extension would be permitted development.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR