



Appeal Decision

Site visit made on 24 October 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Appeal Ref: APP/T5150/X/19/3222020

298 Dollis Hill Lane, London NW2 6HH

- 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 (hereinafter "certificate").
 - The appeal is made by Mr Iftikhar Ahmed against the decision of the Council of the London Borough of Brent.
 - The application ref. 18/4650, dated 6 December 2018, was refused by notice dated 31 January 2019.
 - 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 "*Basement Proposal*".
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Decision

1. The appeal is dismissed.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
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.
4. 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.
5. The existing and proposed elevations on drawing no. 181008-20-P0 are annotated incorrectly. In particular, the *south* elevation should be the front elevation facing the road, rather than the *north* elevation.
6. I saw that works had commenced on the construction of a basement at the appeal property. I understand that these works are pursuant to a subsequent application for a certificate granted by the Council under ref. 19/0423.
7. The appellant raised some queries about the Council's questionnaire but I am not convinced that anything of serious importance turns on the matters raised. The appellant was able to make final comments on the Council's statement.

Main issue

8. The main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

9. The main issue turns on whether or not the proposed development would have amounted to permitted development at the time of the application. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (hereinafter "GPDO"). Whilst there is no direct reference to basements or light wells in the GPDO, the parties are correct to surmise that the planning permission granted by Class A of Schedule 2, Part 1 of the GPDO for enlargements, improvements or other alterations of a dwellinghouse could potentially allow for basement extensions, subject to the limitations set out therein at A.1.
10. No. 298 Dollis Hill Lane is a 2-storey, semi-detached house with a double height bay to the front. It stands on land that is to the north of and higher than the carriageway of Dollis Hill Lane. The enlargement which is proposed to be carried out under Class A would add a basement to the dwelling to provide a gym. It would be lit from 4 light wells, each with a lockable grille over. In my view, the light wells and grilles and the subterranean supporting walls associated with them would all be part and parcel of the operational development involved in the construction of the basement extension, rather than some separate external landscaping features.
11. Development is not permitted by Class A under the limitation at A.1 (e) if *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.*
This restriction means that any development to enlarge a house that is in front of a principal elevation, or in front of a side elevation that fronts a highway will require an application for planning permission. It is only part (i) that is of relevance here as there appears to be no dispute that the front elevation facing Dollis Hill Lane forms the principal elevation of the original dwellinghouse.
12. In this case, the outermost subterranean supporting wall associated with the proposed basement's front light well would extend 2 m beyond the main front wall of the house and perhaps just over 1 m beyond the front bay. That light well and the lockable grille over would also be in advance of those 2 parts of the principal elevation. There would thus be an infringement of the limitation at A.1 (e) (i) under Class A because the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse.
13. Whether or not the basement proposal would have any material effects upon the appearance of the principal elevation, the street scene or neighbours are matters which would normally be addressed under a planning application. The Council's original response to part (ii) of A.1 (e) may have caused the appellant some confusion and I consider that it should perhaps have been more accurately recorded as **Not applicable** rather than **Compliant**. Still, this does not change my main finding. The exercise of other unrelated permitted development rights

could introduce considerably more physical changes. However, that is not of any relevance to the judgment that needs to be made in this case.

14. Consequently, I agree with the Council that there would a failure to meet a relevant limitation applying to such development, so that the proposed development would not amount to permitted development and would not benefit from the planning permission granted through the GPDO. The appellant has not referred to any previous appeal decisions or Council decisions which would point me in the directions the appellant is suggesting. The Council's decision is not out of step with the Government's Technical Guidance on householder permitted development rights. On the balance of probabilities, I find that the proposed development would not have been lawful if begun at the time of the application.
15. For the reasons given above I conclude that the Council's refusal to grant a certificate 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.

Andrew Dale

INSPECTOR