



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2019

Appeal Ref: APP/Q5300/X/19/3224064

31 Apple Grove, Enfield EN1 3DA

- 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 and Mrs West against the decision of the Council of the London Borough of Enfield.
- The application Ref 19/00049/CEA, dated 7 January 2019, was refused by notice dated 5 March 2019.
- 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 on the application form as: *"Single storey rear extension in accordance with Householder Permitted Development rights as set out Town and Country Planning (General Permitted Development) Order 2015 [sic] Schedule 2, Part 1, Class A and conditions as set out in DCLG Permitted Development for Householders-technical guidance 2017, A.1 (a-j inclusive)"*.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. Following the agreement of both main parties I concluded that a site visit was unnecessary, as having regard to the submitted details it would not add to my understanding of the proposal.

Main Issue

2. The main issue in this appeal is whether it has been shown that the proposal would be granted planning permission by Article 3, Schedule 2, Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

3. The burden of providing sufficiently precise and unambiguous evidence to show that an LDC should be granted rests firmly with the appellant, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a semi-detached dwelling. It is proposed to erect a single storey rear extension. The drawings submitted with the LDC application show that the proposal would project 4.8 m from the rear wall of the dwelling, with a flat roof measuring 3 m high to the eaves.

5. The GPDO Article 3, Schedule 2 Part 1 Class A grants planning permission for the enlargement of a dwelling, subject to certain limitations and conditions. As the proposal would extend beyond the rear wall of the original dwelling by more than 3 m, it would breach the limitation at paragraph A.1 (f), Class A.
6. However, the site is not located in a Conservation Area or other area where development permitted by Class A is more restricted. Therefore, Class A paragraph A.1 (g), which permits a larger home extension comprising the erection of a single storey extension of up to 6 m from the rear wall of the original dwelling up to a height of 4 m, is relevant in this case¹. As Class A paragraph A.1 (h) is only relevant where the enlargement would be more than one storey, the reference in the Council's decision notice is clearly in error.
7. Development under Class A paragraph A.1 (g) must comply with the condition in paragraph A.4. This requires the developer to notify the Council with certain information about the proposal, before development commences. The information specified at paragraph A.4 (2) includes the depth and height of the development, together with a plan showing the site and the proposal. On receipt of this information, the Council must notify adjoining owners or occupiers. Where the adjoining owners or occupiers object, the Council's prior approval is required. The effect of paragraph A.4 (10) is that development cannot commence until either the Council have confirmed in writing that prior approval is given or not required, or; 42 days have elapsed since the date the information at paragraph A.4 (2) was received by the Council and they have not notified the developer that prior approval is given or refused.
8. According to the appellants, they submitted written notification of a proposed single storey rear extension to the Council under the above procedure on 8 August 2018. I was provided with a copy of an e-mail of the same date, from a Council officer confirming receipt of an 'application form' in respect of the site. However, a copy of the relevant form was not supplied. No details of any information submitted to the Council to fulfil the requirements of paragraph A.4 (2) were provided. Apart from a copy of a letter addressed to the Council dated 20 September 2018, in which a Council reference of 18/03354/PRH is quoted, no other details of the information submitted were supplied.
9. The Council's officer report for the LDC application refers to a previous application for a proposed 4.8 m rear extension with the above reference. Therefore, it is likely that the extension for which an LDC is now sought would be similar in terms of its depth to that in the prior notification submission. According to the Council, the above referenced application was refused on 20 September 2018, although no copy of their decision notice was provided. In any event, if that were the case the decision would have been too late, as the 42-day determination period at paragraph A.4 (10) expired the day before.
10. However, where the 42-day period has expired without the Council making a decision, the development must be carried out in accordance with the information submitted to the Council, to comply with paragraph A.4 (11) (c). Without the details of what was submitted to the Council before me, it is not clear whether the proposal is materially similar in all respects to the prior

¹ On the application date, Class A paragraphs A.1 (g) and A.4 (13) only applied until 30 May 2019. However, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 subsequently revoked these time limits, making paragraph A.1 (g) permanent.

notification. It is not clear whether the maximum height and eaves height of the proposal, together with the relationship to adjoining residential properties, would be materially similar to that in any information submitted with the prior notification. The drawings submitted with the LDC application provide no assistance in terms of assessing any similarity with the prior notification. This is because the drawings were clearly prepared much later, at around the time the LDC application was submitted.

11. Therefore, I am not persuaded that the condition at Class A, paragraph A.4 has been complied with in respect of the proposal. The available evidence is not sufficiently precise and unambiguous to show that the proposal would accord in all material respects with information submitted to the Council in the prior notification. The failure to comply with the above condition means that the proposal would be in breach of the limitation at Class A paragraph A.1 (g).
12. The Council did not suggest that the proposal would breach any Class A limitations and conditions other than those set out above. I found no reason to disagree with their assessment. Nevertheless, for the above reasons the appellant has not discharged the burden on them to show, on the balance of probability, that the proposal would be granted permission by the GPDO Article 3, Schedule 2 Part 1 Class A.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension 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.

Formal Decision

14. The appeal is dismissed.

Stephen Hawkins

INSPECTOR