



Appeal Decision

Site visit made on 5 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 8 January 2020

Appeal Ref: APP/U5360/X/18/3213785

69 Watermint Quay, Hackney, London N16 6DN

- 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 H Schneck against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/2684, dated 23 July 2018, was refused by notice dated 27 September 2018.
 - 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 as a '*6m rear single storey extension.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 23 July 2018. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisting at the time of the application which, hereafter, I shall refer to as "the GPDO".
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof falls on the appellant and is on the balance of probability.
4. In April 2019, during the appeal process, in response to an application made under the Prior Notification procedure, the Council decided that Prior Approval was not required for an extension to a depth of up to 6m deep and 3m in height (ref 2019/0648). The submitted plans indicate that this basement extension would sit directly below the extension the subject of the current appeal. This decision has not affected my conclusions on the current appeal.

Background and Main Issue

5. Article 3, Schedule 2, Part 1, Class A of the GPDO grants planning permission for the enlargement of a dwellinghouse involving a single-storey addition that

would extend beyond the rear wall of the original dwellinghouse by no more 6m in the case of a terraced dwellinghouse, such as the appeal property.

6. This LDC appeal follows on from an unsuccessful appeal earlier this year (*APP/U5360/D/18/3210506*) against the Council's refusal to grant approval under the Prior Notification procedure for a 6m deep extension.
7. The main issue in the current appeal is whether the development would conflict with Part 1, Class A and, on this basis, whether the Council's decision to refuse the LDC was well founded.

Reasons

8. The appeal dwelling provides accommodation over four storeys and the amenity space to the rear of the property is provided on two distinct and separate levels. Nearest the dwelling a lower patio area spanning the full width of the curtilage is accessed from the basement's rear doors. At the far end of this courtyard, at a distance of some 6m from the dwelling, is situated a raised patio terrace which is currently accessed via external steps and extends to the property's rear boundary.
9. The proposed extension itself would provide a single floor of accommodation to a height of approximately 3m, and this would be accessed from ground floor level effectively overlying the 6m deep courtyard area underneath. The submitted drawing no. jw673-115 Rev A illustrates the proposed arrangement and this shows the far end of the extension located directly above a retaining wall and a connected rendered pier which would be positioned against the front end of the raised terrace. The development would provide direct access to this terrace.
10. Article 2(2) of the GPDO identifies how the height of a building should be measured. It states that 'Unless the context otherwise requires, any reference in this Order to the height of a building ... is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building ... in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.'
11. The Technical Guidance to the GPDO goes further in saying that the surface of the ground would not include any addition on top of the ground such as decking. In this particular instance the artificially created raised terrace means that the rear amenity space now has two distinct levelled terraces, with a sharp, immediate transition. In contrast, although the neighbouring properties' rear gardens are similarly accessed from their respective basements, and the land is level for a short distance beyond the dwellings' rear elevations, sections of their side boundary fencing rise rearwards to meet the natural upward slope of the garden area.
12. Notwithstanding the above, I consider also that the proposed physical arrangement illustrated and clarified by drawing no. jw673-115 Rev A would effectively enclose the resultant space created at basement level. The dwelling's existing rear doors would provide access to this area which would be enclosed at its rear end by a solid wall, close-boarded fencing to its flanks which abut both side boundaries, and above by a solid ceiling which would sit

- below the floor of the proposed extension itself. In effect, the enlarged part of the dwelling would constitute a two-storey addition to the property.
13. In such circumstances the relevant proviso is Part 1, A.1(h) which says that development is not permitted under Class A should the enlarged part of the dwellinghouse have more than a single storey and, by way of proviso (i) thereof, extend beyond the rear wall of the original dwellinghouse by more than 3m.
 14. The appellant considers that the word 'context' in the GPDO wording 'Unless the context otherwise requires...' does not mean the context of the site or the development concerned, but the statutory context in which the word appears. This might be the case but, given my findings as to the proposal being in conflict with A.1(h), whether or not the proposed extension would be taller than the 4 metres maximum height stipulated under provisos A.1(g)(ii) takes on a lesser importance in my assessment.
 15. The appellant has brought to my attention other decisions that consider the same point in relation to land levels and from where the height of proposals should be measured. In particular, I have been provided with an appeal decision letter (*APP/U5360/D/18/3211630*) relating to a proposed single storey rear extension at No 3 Watermint Quay, a property close to the opposite end of the terrace. In the above case the appeal was successful, but there is a clear material difference given that the land levels progressively slope down towards No 67 and beyond. As such, No 3's rear garden is accessed from its ground floor rather than at basement level and, given this, the issues pertinent to the current appeal do not apply. Indeed, the decision in this appeal is solely concerned with the particular facts and circumstances involved, and cannot be influenced by any other previous decisions relating to properties elsewhere.
 16. In summary, I find that the LDC application proposed an extension which would have more than a single storey and would extend beyond the rear wall of the original dwellinghouse by more than 3m. The extension would thereby exceed the limitations of Class A, paragraph A1 (h) and falls outside the parameters of permitted development.
 17. For the reasons given above I conclude that due to the depth of the proposal and the physical arrangement described it would not be permitted development under the 2015 Order. The Council's decision not to issue the Certificate applied for was therefore well founded and the appeal fails. Accordingly, I will exercise the powers transferred to me in s195(3) of the 1990 Act as amended.

Timothy C King

INSPECTOR