



Appeal Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2020

Appeal Ref: APP/E5330/X/19/3230828
146 Eltham Palace Road, London SE9 5LY

- 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 Richard Kemp against the decision of Royal Borough of Greenwich Council.
 - The application Ref 19/1490/CP, dated 19 April 2019, was refused by notice dated 12 June 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 LDC is sought is described on the application form as demolition of existing side and front extensions and erection of single storey side extension incorporating front porch.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Preliminary matters

2. No site visit was made in this case as it was not necessary for me to inspect the property internally or externally in order to determine the appeal.
3. Section 192(2) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application for a single storey side extension and porch against the provisions set out in Schedule 2, Part 1, Class A and D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
5. 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 will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities.
6. The Council's reason for refusal is focused purely on the proposed porch construction that is deemed not to fall within the limits of permitted

development (PD) as set out within Schedule 2, Part 1, Class D of the GPDO. The Council accepted that the proposal would not breach any of the other limitations and conditions in Class A. Following my own assessment, I find no reason to conclude otherwise. I shall therefore limit my considerations to the single remaining issue between the parties, which is whether the proposed porch would be PD.

7. It was noted that there was a discrepancy between the Council and the appellant concerning the measurements of the proposed porch and it was suggested that the measurements be re-visited by both parties. The Council subsequently confirmed an error in their calculations and agreed that, having re-measured the drawings for the proposed porch, it considered the proposal to fall within the limits of Schedule 2, Part 1, Class D of the GPDO.

Main issues

8. The main issue is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is PD under Schedule 2, Part 1 of the GPDO.

Reasons

9. Class D of Part 1 of Schedule 2 of the GPDO provides PD rights for the erection of a porch outside any external door of a house subject to limitations. Development is not permitted if the ground area, measured externally, exceeds 3 square metres (sqm); if it exceeds 3 metres (m) above ground level; or, any part of the structure would be within 2 m of any boundary of the curtilage of the dwellinghouse with a highway.
10. The Council determined that the proposed development would not have been lawful because the ground area of the proposed porch structure would be 3.2 sqm and would therefore not fall within the limits of PD as set out in Schedule 2 Part 1 Class D.1(b) of the GPDO.
11. However, the Council accepts that due to an error of calculation, the floor area, measured externally, would not exceed 3 sqm and that the proposed operations would satisfy the GPDO.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the demolition of the existing side and front extensions and the erection of single storey side extension incorporating a front porch was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me under s195(2) of the Act.

S Hanson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 April 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence shows that, on the balance of probability, the proposed operations described in the First Schedule and shown on the drawings titled Existing Plans and Elevations 101 16 April 2019; Proposed Plans and Elevations 201 dated 21 May 2019; and Site Location Plan 1:1250 would be granted planning permission by Article 3, Schedule 2, Part 1 Class A and Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S Hanson

INSPECTOR

Date: 6 February 2020

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First Schedule

Demolition of existing side and front extensions and erection of single storey side extension incorporating front porch.

Second Schedule

146 Eltham Palace Road, London SE9 5LY

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which are materially different from those described, or which relate to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **6 February 2020**

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Land at: 146 Eltham Palace Road, London SE9 5LY

Reference: APP/E5330/X/19/3230828

Scale: Not to scale

