



Appeal Decision

Site visit made on 14 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 23 February 2020

Appeal Ref: APP/Z5630/X/19/3235599

37 Selbourne Avenue, Tolworth KT6 7NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Attenborough against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 19/00902/LDP, dated 2 April 2019, was refused by notice dated 10 July 2019.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a single storey 3m rear extension.
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Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. For the avoidance of doubt, the planning merits of the development are not relevant in the context of an appeal made under Section 195 of the 1990 Act as amended.
3. I saw from my site visit that the development has been built. However, I understand that the works took place sometime after the application was submitted.
4. The plans are listed in the decision notice as follows: 0614/S/01-Site Location and Block Plan, 0614/S/02-Existing Plans, 0614/S/03-Existing Elevations, 0614/P/01-Proposed Plans and 0614/P/02-Proposed Elevations. I have a further plan 0614/P/03, which the parties agree should be taken into account. I have considered the appeal on this basis.

Main Issue

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

Reasons

6. The Council refused to issue the lawful development certificate because it considered the proposed extension did not fall within the parameters of 'permitted development' as set out under Article 3 and Schedule 2, Part 1, Class A (j)(iii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), as the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse, and would have a width greater than half the width of the original dwellinghouse. 'Original' in this context means a building as it existed on 1 July 1948.
7. In reaching this conclusion, the Council relied upon a block plan, which shows a small hatched area adjoining the rear of the appellants' property and extending to about half the width of the main house. The Council considers that this plan shows the property had a rear outrigger, which "may have been a coal shed or outside toilet". It is claimed that this structure existed on 1 July 1948 and so formed part of the original dwellinghouse. On this basis, it was concluded that the new extension, which extends the full width of the house, would extend beyond a wall forming a side elevation of the original dwellinghouse.
8. While the Council has sought to provide contradictory evidence, this is based on a series of assumptions that do not stand up to scrutiny. Firstly, there is no date on the plan before me. Even I were to accept the date as 1 July 1948, there is no evidence that the alleged structure was built as shown. The hatching indicates that it was a proposed alteration. Furthermore, there are no similar structures to the properties either side or in the vicinity¹, which I would have expected had this been original.
9. In addition, the hatched area is relatively large. This is not consistent with the likely form and size of a coal shed or outside WC. The siting is also unusual. A coal shed would not normally be tucked away at the rear of the house, as this would hinder access for deliveries. Finally, if built with solid walls, as would have been usual for such a structure, it would have obscured the rear ground floor window. It is more probable that the hatched area related to a glazed conservatory type extension that may or may not have been built. Either way, it would not have formed part of the original dwellinghouse.
10. Overall, I find the appellants' evidence to be sufficiently precise and unambiguous. I am satisfied that the development would have fallen within the parameters of 'permitted development' as set out under Schedule 2, Part 1, Class A (j)(iii) of the GPDO had it been instituted on the date of the application.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey 3m rear extension was not well-founded.

¹ Land Registry Plan, Appellants' Appendix C.

12. The appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Decision

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

Debbie Moore

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 2 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would have fallen within the parameters of 'permitted development' as set out under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) had it been instituted on the date of the application.

Signed

Debbie Moore

Inspector

Date: 23 February 2020

Reference: APP/Z5630/X/19/3235599

First Schedule

Single storey 3m rear extension

Second Schedule

Land at 37 Selbourne Avenue, Tolworth KT6 7NR

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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates 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: 23 February 2020

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Scale: NTS

