
Appeal Decision

Site visit made on 11 February 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/T0355/X/18/3211902

4a Horton Road, Datchet, Slough, SL3 9ER

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Development ("CLD").
- The appeal is made by Shehzad Satter ("the Appellant") against the decision of the Council of the Royal Borough of Windsor and Maidenhead ("the Council").
- The application Ref 18/02068, dated 13 July 2018, was refused by notice dated 6 September 2018.
- The application was made under Section 191(1)(b) of the 1990 Act.
- The development for which a CLD is sought are for two existing single-storey rear extensions and a rear patio (300mm above existing ground level).

Summary of Decision: The appeal is allowed and a CLD is issued, in the terms set out below in the Formal Decision.

Procedural Matters

1. One of the reasons for refusing the CLD was because the Council claimed that it included a raised platform i.e. the patio that measured 600mm in height above the existing ground level. The patio is located to the rear of the extensions. At the site visit the Council's and the Appellant's representatives measured the height of the patio and recorded that it was 300mm or less above the existing ground level.
2. In my Appeal Decision I will refer to:
 - a) The application Drawing No. 1747-PL-01 Rev ZN as "the Drawing".
 - b) the Dining Room Extension as shown on the Drawing as "the Dining Room Extension".
 - c) The Kitchen as shown on the Drawing as "the Kitchen Extension".
3. I have been referred to the following Appeal Decisions:
 - a) Millfield House, Headcorn Road, Staplehurst, Tonbridge ("the Millfield House Appeal Decision"), and
 - b) 26 Stanbury Avenue, Watford ("the Stanbury Avenue Appeal Decision").

I have read and understood those Appeal Decisions.

Background Matters

4. In January 2015 the Council confirmed that two single-storey extensions of the dimensions specified in the Council's Notice of Decision dated 19 January 2015

- did not require Prior Approval ("the Prior Approval Decision") subject to compliance with conditions. The relevant condition in the Prior Approval Decision was that the extensions were to be completed by 30 May 2016. Accordingly, the two extensions referred to in the Prior Approval Decision would have been permitted development pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") if they were substantially completed by 30 May 2016.
5. Building works on the two extensions commenced in January 2016.
 6. The building contractor abandoned the work on the two extensions and left the Appellant in a contractual dispute whereby the works could not be completed by the date specified in the Prior Approval Decision.
 7. The contractual dispute was finally resolved in December 2017. The Appellant suffered a £20,000 financial loss as the builder had the Appellant's monies but did not return to complete the works.
 8. The Appellant therefore had to find a replacement builder to complete the two extensions. The two extensions were duly completed in accordance with the details approved by the Prior Approval Decision albeit not in accordance with the time condition.
 9. It was the Appellant that brought this matter to the Council's attention.
 10. The Appellant noted that the permitted development rights for larger extensions had been extended until 30 May 2019. The Appellant expected that the Prior Approval Decision would be extended to 30 May 2019 given that the two extensions had been built in accordance with the Prior Approval Decision.
 11. However, in February 2018 the Appellant was advised that the Prior Approval Decision could not be extended. As alternatives to this the Appellant could, amongst other things:
 - a) Demolish the two extensions, dig up their foundations and apply again for extended extensions i.e. a repeat application of the Prior Approval Decision.
 - b) Alter the two extensions, separate them and reduce their length from 5.842m & 5m to 4m.
 12. In March 2018 the Appellant asked the Council, amongst other things, what an acceptable gap between the two extensions should be. The Council replied that they were unable to specify what the gap should be but quoted from unspecified "case law".
 13. On 18 April 2018 the Appellant raised with another Council Officer what the gap should be. Once again, the Council were unable to specify a figure.
 14. The Appellant stated that he had a conversation with a Council Officer who confirmed that if the two extensions were reduced to 4m in length that would be acceptable with the existing gap. The Appellant arranged for that to be done and the resulting extensions are the subject of this appeal. In these circumstances the Appellant considered that the only sensible approach was to complete the development with the same gap between the two extensions as approved by the Council in January 2015 in the Prior Approval Decision. This work was done in May 2018.

15. On 29 June 2018 a Council Officer informed the Appellant at a site visit that there was no meaningful gap between the extensions. The gap between the two extensions is about 11 centimetres ("the Gap"). The Council Officer was unable to confirm what the gap should be. Another Officer attending the site on the same occasion was of the view that "a gap is a gap".

Reasons

16. The Council's position is that:

- a) The Dining Room Extension is a side and rear extension.
- b) The Kitchen Extension is a rear extension.
- c) Because there is no "meaningful gap" between the Dining Room Extension and the Kitchen Extension their width should be aggregated (as if they were one "wrap around extension") and the combined width of the extensions exceeds half the width of the original dwelling-house.

Accordingly, the Kitchen Extension and the Dining Room Extension cannot be permitted development.

17. The Appellant's view is that the Kitchen Extension and the Dining Room Extension are separate extensions and individually they are both permitted development and thus lawful.
18. In my view there are two rear extensions at No. 4a namely the Kitchen Extension and the Dining Room Extension.
19. Internally, the only way you can get from the Kitchen Extension to the Dining Room Extension is by walking through part of the original house and vice versa.
20. The Council say that the Kitchen Extension and Dining Room Extension are seen as one entity when viewed from the rear garden. That is correct but only to a limited extent. There are parts of the rear garden where, in my opinion, the Gap clearly indicates that there are two rear extensions at No. 4a.
21. Further, the rear wall of the Kitchen Extension and the rear wall of the Dining Room Extension are staggered, and this reinforces the visual impression from parts of the rear garden that the Kitchen Extension and the Dining Room Extension are wholly distinct and separate from one another. Finally, no part of the Kitchen Extension or any part of the Dining Room Extension touch each other at any point because of the Gap.
22. It is difficult to fully understand the developments that were proposed in the Stanbury Avenue Appeal Decision and the Millfield House Appeal Decision. In particular I have not been provided with copies of the plans that were before those Inspectors nor have I been provided with the Appeal Decision or plans relating to an earlier Appeal Decision relating to Millfield House.
23. I do not consider that the Gap at No. 4a is a device used by the Appellant to circumvent the provisions of the Order. If that were the case the Council would have opposed the Prior Approval Decision which had the same gap between the two extensions.

24. I consider that the Millfield House Appeal Decision is distinguishable from the development that is before me because:
- a) The roofs of the two extensions under consideration at Millfield House would have touched each other.
 - b) The Gap at No. 4a is much larger than the gap which the Inspector was considering at Millfield House.
25. It is clear from reading the Stanbury Avenue Appeal Decision that the Inspector considered the gap of 5 centimetres between a pre-existing rear and side extension was clearly a device used to avoid making a planning application for the proposed development. In this case the Gap arises simply by reason of that being the space that was left when the two extensions had been built. The extensions were not built to be a wraparound extension – they are distinct and separate.
26. I consider, for the reasons explained above, that the Gap is sufficient in this case to avoid the Kitchen Extension and the Dining Room Extension being seen as one extension. Accordingly, I consider the Kitchen Extension, the Dining Room Extension and the rear patio are permitted development pursuant to Class A, Part 1, Schedule 2 and Article 3 of the Order.

Conclusion

27. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a CLD in respect of two existing single-storey rear extensions and a rear patio was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act and grant the Appellant a CLD.

Formal Decision

28. The appeal is allowed and attached to this decision is a CLD describing the existing operations which are considered to be lawful.

Tim Belcher

Inspector

Certificate of Lawful Development ("CLD")

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by Section 10 of the Planning and Compensation Act 1991) ("the 1990 Act")

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

IT IS HEREBY CERTIFIED that on 13 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged and hatched in red on the plan attached to this CLD, were lawful within the meaning of Section 191(2) of the 1990 Act, for the following reason:

The two existing single-storey rear extensions and the rear patio were permitted development in accordance with Class A, Part 1, Schedule 2 and Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

No enforcement action could be taken against the two existing single-storey rear extensions and the rear patio and they do not constitute a contravention of any of the requirements of an Enforcement Notice then in force.

Tim Belcher
Inspector

Dated: 4 March 2020

Reference: APP/T0355/X/18/3211902

First Schedule

Two existing single-storey rear extensions and a rear patio (300mm above existing ground level).

Second Schedule

4a Horton Road, Datchet, Slough, SL3 9ER

NOTES

This CLD:

- a) Is issued solely for the purpose of Section 191 of the 1990 Act.
- b) Certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.
- c) 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 operations which are 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.



Plan

This is the plan referred to in the CLD dated 4 March 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

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