
Appeal Decision

Site visit made on 26 February 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2020

Appeal Ref: APP/N4720/X/19/3238772

199 West Park Drive West, Roundhay, Leeds LS8 2BE

- 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 Dr Sebastian Rost against the decision of Leeds City Council.
 - The application Ref 19/01035/CLP, dated 19/02/2019, was refused by notice dated 18/07/2019.
 - 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 a hip to gable roof extension, rear dormer, single storey side extension and changes to fenestration.
-

Decision

1. The appeal is allowed in so far as it relates to the hip to gable roof extension, rear dormer and changes to fenestration and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operation which is considered to be lawful.
2. The appeal is dismissed in so far as it relates to the single storey side extension.

Procedural matters

3. The Council has indicated that the hip to gable roof extension, rear dormer and changes to fenestration would have been development permitted by Class B and Class C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). On the balance of probability, I have no reason to disagree.
4. Section 193(4) of the Act as amended states that a certificate may be issued - for the whole or part of the land specified in the application (a), and (b) where the application specifies two or more operations or other matters, for all of them or some one or more of them, and shall be in such form as may be prescribed by a development order. This provides that a certificate may be issued for part of the proposed operation which would have been lawful on the date that it was made. I therefore intend to issue a certificate for those proposed operations which would have been lawful.

Main Issue

5. The main issue is whether the Council's refusal of the single storey side extension was well founded.

Reasons

6. The property is a semi-detached hipped roof dwelling which is angled to the road. The matter which is in dispute is whether a side extension to the property which is so angled due to the configuration of the dwelling to the road would extend beyond a wall which – (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse under Class A.1 (e) of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). The matter is whether the extension fronts a highway and forms a side elevation of the original dwellinghouse under part (ii).
7. The Council relies on the published Permitted development rights for householders Technical Guidance 2019. The Technical Guidance at page 16 advises that; *'the extent to which an elevation of a house fronts a highway will depend on factors such as: (i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway; (ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway'*.
8. From the available evidence the angle of the extension exceeds 45 degrees and complies with the guidance. The Council indicates that the angled side elevation of the extension would be some 6m away from the highway. The distance between the house and the highway would be greater although the nearest corner of the house to the highway is similar to the 6m distance.
9. The question of whether that distance may be regarded as 'substantial' is not defined in the GPDO or Technical Guidance. The common dictionary definition of 'substantial' is of *'considerable importance, size, or worth'*.
10. The visual relationship of the house and the proposed extension in relation to the roadside would be evident in terms of the proposal's roof profile and side wall. There is no significant intervening area of land between the house and the boundary of the garden wall and the highway. In all, I do not regard the distance between the house and the highway to be substantial within the meaning of the Technical Guidance.
11. As a matter of fact, and degree the proposed single storey side extension would extend beyond the wall which fronts a highway and forms a side elevation of the original dwellinghouse and is not permitted development under Class A.1 (e)(ii) of Schedule 2, Part 1 of the GPDO.
12. On the balance of probability, the Council's refusal of the single storey side extension was well founded. The appeal for this part of the development is dismissed.

Conclusions

13. I propose to issue a certificate for those proposed operations which would have been lawful, namely, the hip to gable roof extension, rear dormer and changes to fenestration. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
14. I shall dismiss the appeal in so far as it relates to the single storey side extension.

Iwan Lloyd

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 19/02/2019 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 development shown on drawings numbered PD01, PD02, PD05 and PD06, dated 25/01/2019 would have been development permitted by Class B and Class C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

Signed

Iwan Lloyd

INSPECTOR

Date 22 May 2020

Reference: APP/N4720/X/19/3238772

First Schedule

Hip to gable roof extension, rear dormer and changes to fenestration as shown on drawings numbered PD01, PD02, PD05 and PD06, dated 25/01/2019.

Second Schedule

Land at 199 West Park Drive West, Roundhay, Leeds LS8 2BE

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 use /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, was /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 use /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: 22 May 2020

by Iwan Lloyd BA BTP MRTPI

Land at: 199 West Park Drive West, Roundhay, Leeds LS8 2BE

Reference: APP/N4720/X/19/3238772

Scale: Not to scale

