
Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2020

Appeal Ref: APP/C5690/X/19/3239901
143 Braidwood Road, London SE6 1QY

- 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 Ms Geneva McKenzie against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/112490, dated 28 May 2019, was refused by notice dated 9 August 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 single storey rear extension.
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Decision

1. The appeal is dismissed.

Reasons

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. The appellant's case is that the proposals are permitted development as a result of the rights set out in the GPDO¹. The Council refused to grant the certificate on the grounds that the proposal would result in an extension which extends more than 3 metres beyond the rear elevation of the original dwellinghouse, and therefore is not permitted development as set out in paragraph A.1 (f)(i) in Schedule 2 Part 1 Class A of the GPDO.
4. Class A Part 1 Schedule 2 of the GPDO gives planning permission for the enlargement, improvement or other alteration of a dwellinghouse. It is subject to several limitations. The limitation A.1(f)(i) states that the works will not be permitted development if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

5. The existing mid terrace dwelling has a single storey rear lean-to which is built up to the boundary with the adjoining dwelling and extends part way across the rear elevation of the main part of the house. Article 2 Interpretation (1) of the GPDO defines 'original' as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1st July 1948, as so built. There is no dispute between the parties that the lean-to is part of the original building.
6. However, for the purposes of the GPDO, a house can have more than one rear elevation, as illustrated in the Technical Guidance² at page 19. In this case the original rear of the dwellinghouse is stepped in plan, and the extension would be similarly stepped, such that no part of the extension would extend more than 3m from the rear elevation directly behind it. It seems clear to me, however, that the Council has interpreted limitation A.1(f)(i) as meaning that no part of the extension can extend more than 3 m from any rear elevation to which it is attached. But the limitation can also be interpreted as meaning that the enlarged part of the dwellinghouse should not extend more than 3m from the corresponding rear elevation, being that directly behind it. That is the more purposive interpretation, and accordingly I consider that the extension in this case would comply with limitation A.1(f)(i).
7. Nonetheless, in order to be permitted development the extension must meet all of the conditions and limitations of the GPDO. In its assessment of the development, as set out in the Council's officer's report, I consider that the assessment against limitation A.1(j) was incorrect insofar as it concluded that the enlarged part of the dwellinghouse would not extend beyond a wall forming a side elevation of the original dwellinghouse. As with the rear elevation, a dwellinghouse can have more than one side elevation. The extension would extend to the side of the side elevation of the lean-to, part of the original dwellinghouse, so that limitation A.1(j) applies. Limitation A.1(j)(iii) provides that development is not permitted if the enlarged part of the dwellinghouse 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. That is the case here, so the extension is not development permitted by the GPDO. For this reason, express planning permission is required for the extension.

Conclusion

8. Although the Council's specified reason for refusal was misplaced, the development is not one that complies with all of the conditions and limitations of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey rear extension was well-founded. The appeal must therefore be dismissed, and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR

² Permitted development rights for householders – Technical Guidance MHCLG 2019