



Appeal Decision

Site visit made on 11 March 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2020

Appeal Ref: APP/G5180/X/19/3232572

5 Henry Street, Bromley BR1 3JB

- 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 Claire Naik against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/01149/PLUD, dated 6 March 2019, was refused by notice dated 29 May 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 construction of a small rear extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal of the rear extension was well founded.

Reasons

Preliminary matters and proposal

3. No. 5 Henry Street is a mid-terraced property with an existing rear lean-to and a small external yard adjoining an alley which serves as an access to other houses along the row of houses. The garden for the appeal property lies beyond the alley. The appellant and the Council have agreed that for the purposes of this appeal the rear projection of the proposal would be 3m from the rear wall of the house. They have also agreed that the existing lean-to structure is original built at the same time as the house.
4. The proposal would be to construct a rear extension in the void between the lean-to and up to the boundary of the property with No. 4 Henry Street. The walls of the lean-to would be re-built, and a new flat roof construction would span the width of the rear wall of No. 5. The new flat roof would be the equivalent height as the top of the former roof of the lean-to. The proposed construction would project outwards a similar distance as the former lean-to but stepping back at the point where the extension adjoins the boundary with No. 4. As indicated the whole proposed structure would be covered by a flat roof and built as one entity.

Whether the works are permitted

5. The appellant has indicated that the application would entail re-building the existing lean-to and removing its roof and replacing this with the new structure. The appellant contends that this is permitted not falling within the terms of development with the addition to the side falling within the terms of permitted development either in one class or a combination of classes of Part 1 of Schedule 2 the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) 2015. GPDO Part 1 of Schedule 2 Class A has been referred to for the side extension, Class B and C for the roof construction and Class D also for the side extension.
6. The taking down of the walls of the lean-to and its roof would result in the construction of a new building such that no part of the original would remain. In my view, the rebuilding would amount to works exceeding maintenance, improvement or other alteration of any building under section 55(2)(a) of the Act as amended. As specified in the application the works would amount to a new building. I am satisfied that the operational development would be built as one entity because the new side wall and new rear wall would support the whole structure with a new roof covering the entire proposed development.
7. The proposed development built as an extension from the rear wall of the property would be considered under GPDO Part 1 of Schedule 2 Class A – as enlargement of a dwellinghouse. The proposed operational development would be caught by GPDO Part 1 of Schedule 2 Class A.1 (f) the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 4m in the case of a detached dwellinghouse, or 3m in the case of any other dwellinghouse. In this case, the proposed operational development exceeds 3m from the rear terrace property wall. For those developments exceeding the limitations of Class A.1 (f) but is allowed by paragraph A.1(g) paragraph A.4(2) requires the developer to submit a prior approval application to the local planning authority. There is no evidence that a prior approval application has been submitted.
8. I therefore consider as a matter of fact and degree that the proposed operational development would not be permitted development under Class A.1 (f) and (g) of Schedule 2, Part 1 of the GPDO.
9. I have considered the submissions that the development falls within Class A.1 (j) and (ja) but these relate to side extensions and total enlargements. In my view, they do not relate to a situation where a new building extension to the rear of the property would be constructed in place of the original lean-to structure.
10. I do not regard the proposed development to fall within Class B, C or D of Schedule 2, Part 1 of the GPDO, since what is created is an enlargement of the floor space it is more than an addition to the roof of a dwellinghouse or alterations to the roof and the development as whole also exceeds the limitations of Class D – porches.
11. I have had regard to the appellant's suggestion that the outer walls of the lean-to could be kept, and walls could be built internally. This is not what is specified on the application drawing. It is unclear to what extent the original lean-to would be retained in any revised proposal which, in any event, the details of such a scheme is not before me.

12. I have had regard to the representations of the interested party, although I have confined my assessment to whether the proposed development would be lawful if built.
13. For the reasons given above, I conclude that the Council's refusal of the rear extension was well founded. The appeal is therefore dismissed.

Iwan Lloyd

INSPECTOR