



Appeal Decision

by **Richard S Jones BA (Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 01 July 2020

Appeal Ref: APP/U5930/X/19/3243800

4 Long Leys, Chingford, E4 9LW

- 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.
 - The appeal is made by Mr Abdul Ghafoor against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 192698, dated 14 August 2019, was refused by notice dated 4 October 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 described as *"First floor extension will be created to maximise space and add an extra bedroom above an existing ground floor extension. Same materials will be used as the existing brickwork"*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I wrote to the parties to advise that, having reviewed the representation and evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision and that not doing so would not be prejudicial to any party. This is because the case turns on legal points and the parties have submitted sufficient evidence to understand the nature of the site given the points in dispute.
3. The appeal relates to an end of terrace, two storey dwelling with single storey rear extension. The Lawful Development Certificate (LDC) is sought for a first floor extension above the existing extension, using matching materials.
4. I have noted the submissions made by the appellant regarding the aesthetics of the extension, the effect on the occupants of neighbouring properties, the accessibility of the location and why an extra bedroom is required. However, an application under s192(1)(b) of the Act¹ seeks to ascertain whether the proposed operations would be lawful. Such applications are determined on the basis of fact and law, and this means that the planning merits of the extension and the personal circumstances of the appellant can form no part of my assessment as to whether an LDC should be granted.

¹ The Town and Country Planning Act 1990 as amended

Main issue

5. For the purposes of the Act² operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they do not involve development or require planning permission. The onus lies with the appellant to demonstrate on the balance of probabilities, that the extension would be lawful.
6. The main issue for this appeal is whether a grant of planning permission would be required or is granted for the proposed extension.

Reasons

7. The appellant has not shown that planning permission would not be required at all for the proposed extension. Planning permission is already granted by Article 3 and Schedule 2, Part 1, Class A of the GPDO³ for extensions to dwellinghouses, but subject to conditions and limitations.
8. The Council objects that the proposed extension would conflict with Part 1, paragraph A.1(i). It provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres. The limitation therefore relates to the boundary of the curtilage, rather than the separation to the neighbouring properties, as implied by the appellant.
9. Although the design would provide a 2 metre separation to the boundary with No 5 Long Leys, the opposite side of the extension would be positioned on or at least adjacent to the eastern boundary of the curtilage of the dwelling. Also, because the extension would sit on top of an existing ground floor extension, the eaves height would significantly exceed 3 metres.
10. I find, therefore, that the appellant has not demonstrated either that the proposed extension would not require planning permission, or that it has been granted planning permission by the GPDO. On the evidence before me and the balance of probabilities, the extension would breach the limitations set out in paragraph A.1(i) to Part 1, Class A of the GPDO.
11. I conclude that the Council's refusal to grant an LDC was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the Act.

Richard S Jones

INSPECTOR

² S191(2)(a)

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)