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## Appeal Decision

Site visit made on 8 June 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 July 2020**

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**Appeal Ref: APP/Z5060/X/19/3237624**

**30 Whalebone Lane South, Dagenham, Essex RM8 1BB**

- 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 Mr Thanaraju Ratnasingham against the decision of the Council of the London Borough of Barking & Dagenham.
  - The application Ref 19/00152/CLU\_E, dated 24 January 2019, was refused by notice dated 12 April 2019.
  - The application was made under section 191(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 "shop=use single storey rear extension falling within Class A, Part 7 of the GPDO 2015".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, and refers to the existing use of the ground floor of the premises as a shop, it is clear from the plans and accompanying documents that the development comprises the "Erection of a single storey rear extension". The Council dealt with the proposal on this basis as will I.
3. 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 in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probabilities, that the development is lawful.

### Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposal constitutes permitted development under the terms of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). In particular, it is agreed by the main parties that it is necessary to

consider whether the proposal would comply with the Schedule 2, Part 7, Class A of GPDO.

## Reasons

5. Subject to limitations and conditions, Schedule 2, Part 7, Class A of the GPDO permits the extension or alteration of a shop or financial or professional services establishment.
6. The Council determined that as the rear extension adjoins residential premises classified as Use Class C3 of the UCO<sup>1</sup>, it would fall foul of Part 7, Class A, Paragraph A1(c) (i) (aa) of GPDO. The relevant restriction there is that any part of the development should not be on land which adjoins other premises which are used for a purpose falling within any of the classes in Part C (residential premises or institutions) of the UCO. The appellant considers that paragraph A1(c)(i)(aa) cannot be read separate to A1 (c) (ii) due to the word 'and' between sub-section (i) and (ii). For a certificate to be issued, the development must comply with all the conditions and limitations. I shall consider the appeal accordingly. The appeal also turns on whether the extension (the development) is on land that adjoins other premises used for a purpose falling within the relevant class.
7. No 30 Whalebone Lane South is a 2-storey end of terrace property comprising a ground floor convenience store with the first floor in residential use. The neighbouring terrace comprises commercial units at ground floor level with residential above. There is no dispute between the parties that the lawful use of the ground floor of the appeal property is a shop falling within Use Class A1 of the UCO. The appellant states that the ground floor rear extension to the appeal property was carried out during a period between early to mid-2017 and 1 September 2017, after Part 7 of the GPDO was in force and no evidence has been provided to demonstrate that this was not the case.
8. Turning first to A1(c)(i)(aa), where meanings are not defined, it is necessary to interpret the meaning of the words within the GPDO using the ordinary meaning of the language in broad, common sense terms. The Cambridge Dictionary defines 'premises' as "the land and buildings owned by someone, especially a company or organisation". The neighbouring premises, No 32 therefore comprises both the land and buildings. Given that the appeal site is a terraced property and physically attached to the neighbouring premises at No 32 Whalebone Lane South, the extension is on land that 'adjoins' No 32 within any reasonable definition of the word.
9. The adjoining premises at No 32 comprises a ground floor commercial unit (falling within Use Class A of the UCO) with residential use above, with its own separate access at ground floor level from Whalebone Lane South. The appellant suggests that it is only residential uses falling within Class C2 that paragraph A1(c)(i)(aa) refers to, given the clarification in brackets of 'residential premises or institutions'. However, Class C2 only relates to residential institutions. In my view premises has a wider meaning to include all residential premises. In any event, the wording of paragraph A1 (c)(i)(aa) is clear that it restricts the development if it is on land which adjoins other premises which are used for a purpose within 'any' (my emphasis) of the

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<sup>1</sup> of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO).

classes in Part C of the Schedule to the Use Class Order. Therefore, it is clear that this includes 'any' of the classes under Part C of the UCO.

10. The appellant suggests that Part C would not include the flat at No 32 either because a flat is excluded from the definition of a dwellinghouse for the purposes of the GPDO and /or it was ancillary to the use of the shop on the ground floor. On the first of these points, whilst there is no definition of the dwellinghouse within the UCO, the definition of a dwellinghouse under Article 2(1) of the GPDO that excludes flats, applies to permitted development rights attributable to dwellinghouses only. Furthermore, Part 7, Class A, Paragraph A1(c)(ii) of GPDO does not direct you to Article 2(1) of the GPDO but to Part C of UCO, and the UCO does not explicitly exclude flats from Use Class C3.
11. Furthermore, the GPDO further states a 'flat' means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally. Based on the above and given that paragraph A1(c)(i)(aa) of GPDO gives a broad restriction of Part C of the UCO, I find no reason to conclude that the GPDO specifically exclude flats from Part C of the UCO 1987.
12. On the second point, there is no evidence to support the appellant's contention that the flat was, on the balance of probability, ancillary to the shop below rather than a separate primary use.
13. As such, from the evidence submitted and on the balance of probabilities the first floor of No 32 comprises a residential flat which would fall within Use Class C3. Therefore, the extension would, on the date of the application, be on land that adjoins other premises which are used for a purpose falling within Part C.
14. Schedule 2, Part 7, Class A, Paragraph A1 (c) (ii) of GPDO is also relevant, which restricts any part of the development which is within 2 metres of any boundary of the curtilage of the premises. Whilst the Council has not referred to any conflict with this requirement, it is clear from my reading of the plans and site visit that the rear extension, built along the boundary with No 32, also fails to meet the limitation at paragraph A1(c) (ii) of GPDO.
15. Finally, it is stated that parliament's intention is not to prohibit shop extensions, and that most shops have residential above. However, the certificate must be considered solely on the relevant legal tests, and the planning merits are of no relevance. However, it is still open to the appellant to submit a retrospective application for the extension to the shop, where the planning merits could be considered.

## Conclusion

16. For the above reasons, the development did not comply with the limitations relating to Class A of Part 7, as set out in paragraph A1(c)(i) or (ii) of Part 7 of the GPDO for the reasons set out above. 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, and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*R Satheesan*      INSPECTOR