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## Appeal Decision

Site visit made on 27 July 2020

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

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

**Decision date: 04 August 2020**

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**Appeal Ref: APP/K5600/X/19/3236952**

**18 Balliol Road, London W10 6LX**

- 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 Keith Macrae on behalf of Heli Ltd Architects against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref CL/19/04919, dated 11 July 2019, was refused by notice dated 10 September 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 "Erection of 3m rear extension".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

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 facts of the case, the relevant planning law and judicial authority, 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.

### Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed extensions would be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

### Reasons

4. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse. The appellant seeks to establish that the proposed rear extension would be

granted permission by virtue of Class A. Paragraph A.1 and A.2 sets out limitations which proposals must adhere to benefit from permitted development rights. There is no dispute between the parties that the development falls to be considered under Class A. Nor is there any dispute that the development would adhere to the limitations under Class A set out at paragraph A.1 (a) through to (k). I have found no reason to disagree with these findings.

5. The Council determined that the proposed rear extension fails to meet part A.2 (b) of Schedule 2, Part 1, Class A of GPDO. Paragraph A.2(b) states that in the case of a dwellinghouse on Article 2(3) land, development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
6. Article 2 Interpretation (1) of the GPDO defines Article 2(3) land as National Parks, areas of outstanding natural beauty and conservation areas etc. The appeal property is located within the Oxford Gardens Conservation Area and is thus Article 2(3) land.
7. Article 2 Interpretation (1) of the GPDO defines 'original' as (a) a building existing on 1<sup>st</sup> July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1<sup>st</sup> July 1948, as so built. The existing mid-terrace dwelling contains a two storey back addition, and there is no dispute between the parties that the two storey back addition forms part of the original building. Indeed, this is clear from its character, form, materials and appearance, which matches other two storey back additions in the neighbouring terrace.
8. The development would comprise a single storey extension projecting 3m from the rear main wall of the main house, to the side of the original two storey back addition. As a matter of fact, the proposed extension would be situated on article 2(3) land and would extend beyond a wall forming a side elevation of the original dwellinghouse (that being the side wall of the two storey back addition), contrary to limitation in paragraph A.2(b) of Part 1, Class A of the GPDO. I therefore agree with the Council that the proposed extension is not development permitted by the GPDO.
9. I note that the appellant states that the original rear elevation of the building is stepped and has referred to sections and diagrams contained within the Technical Guidance (TG)<sup>1</sup>, in an attempt to demonstrate that the extension would be permitted development. However, the TG is guidance and is not a statutory instrument like the GPDO itself. As such, the starting point shall always be the wording of the GPDO itself. Furthermore, the sections referred to seeks to provide guidance for interpreting paragraph A.1 of Part 1, Class A of the GPDO. Therefore, it does not specifically relate to the interpretation of paragraph A.2(b) of Part 1, Class A of the GPDO, which relates to development on article 2(3) land, such as the appeal development.
10. As mentioned above, the Council has raised no conflict against paragraph A.1 of Part 1, Class A of GPDO, and I have no reason to disagree with this. However, in order to be permitted development the extension must meet all of the limitations and conditions of the GPDO, and for the reasons outlined above, the proposed development fails to satisfy Paragraph A.2 (b) of Part 1, Class A

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<sup>1</sup> Department for Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance (April 2017).

of the GPDO. For this reason, express planning permission is required for the extension.

### **Conclusion**

11. The development is not one that complies with all of the limitations of Article 3, Schedule 2, Part 1, Class A respectively 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 and that 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