
Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 October 2020

Appeal Ref: APP/T5150/X/19/3243978

6 Lomond Close, Wembley, London HA0 4HB

- 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 Ramgi against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/3781, dated 24 October 2019, was refused by notice dated 26 November 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 (LDC) is sought is proposed single storey 3m rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. Where an LDC is sought, the onus of proof is on the appellant to demonstrate that the proposed development would be lawful, and the standard of proof is on the balance of probabilities.
5. The appeal site is a two storey mid-terrace dwelling. To the rear elevation is a single storey brick extension. The appellant proposes to construct a new single storey ground floor extension that would span the whole width of the rear elevation, incorporating some of the walls of the existing brick outrigger.
6. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out permitted development rights for the enlargement, improvement or other alteration of a dwelling house, subject to a number of conditions and limitations. Paragraph (j) provides that 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, and would (i) exceed 4m in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse. The proposed extension would meet criteria (i) and (ii) but would clearly exceed half the width of the back wall of the main house.
7. In the publication 'Permitted development rights for householders - Technical Guidance' (TG), further guidance is given on the provisions of Class A. The TG clarifies that the term 'original' means a building as it existed on 1 July 1948 where it was built before that date, or as it was built if built after that date.
 8. The appellant argues that the brick extension is a later addition, and not part of the original dwelling. He states that the neighbouring properties on the street do not have any outriggers. From the evidence before me, it is likely that the brick structure was added after the house was first built, due to the differing materials and style.
 9. However, although the appellant recognises the definition of the term 'original', as set out above, he offers little evidence to show either the date when the house was built, or the date when the extension was added. For example, if the house had been built prior to 1 July 1948, and the brick extension had been built after 1 July 1948, then the brick structure would not be taken to be part of the original house for planning purposes. If both the house and the brick structure had been built prior to 1 July 1948, then the brick structure would be taken to be part of the 'original' building, as set out in the TG definition.
 10. In the absence of such evidence, it is not possible to determine whether or not the side wall of the brick extension forms a side elevation of the original dwelling. It is not for the decision-maker to guess at such matters, as the onus of proof falls on the appellant. As a result, I am not able to be certain that the proposal meets the provisions of Class A.1(j). and is therefore permitted development.

Conclusion

11. As set out in the NPPG¹, the refusal of an LDC does not preclude another application being submitted at a later date, if more evidence or information can be produced.
12. Nevertheless, on this occasion, I conclude that the Council's refusal to issue an LDC was well-founded and consequently the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR

¹ Paragraph: 005 Reference ID: 17c-005-20140306