



Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 December 2020

Appeal Ref: APP/N5090/X/20/3248899

14 Rushdene Avenue, East Barnet, Barnet EN4 8EW

- 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 Amir Rouf against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/6733/192, dated 10 December 2019, was refused by notice dated 27 January 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is single storey rear extension with a proposed depth of 6 metres from the original rear wall, eaves height of 3 metres and a maximum height of 3 metres. Prior approval not required has been given ref: 18/5873/PNH.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic, and to enable appeals to progress, it was considered that the appeal could be determined without the need for a site visit. This is because the case turns on legal points and the parties have submitted plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute. Both parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No objections were received.
3. The application was made under s192 of the 1990 Act for proposed development. However, the appellant's statement provides that the development was completed in May 2019 pursuant to an application for prior approval¹. With no indication that there has been an agreement between the parties to amend the application to a s191 for a certificate of lawfulness of existing use or development, I shall consider the appeal as submitted.
4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

¹ 18/5873/PNH determination that prior approval is not required, dated 30th October 2018,

5. For the avoidance of doubt, in an appeal under s195 of the 1990 Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.

Main Issue

6. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

7. The Council's case, as detailed in their appeal statement, rests on its view that the rear extension would contravene limitations within the following sections of Schedule 2, Part 1, Class A of the GPDO:
 - (d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.
 - (i) 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.
 - (j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (iii) have a width greater than half the width of the original dwellinghouse.
8. The application plans show that the land to the rear slopes down towards the house. The height of the extension is annotated on the application plan 'PL-10 revision 01 Proposed Side (East and West) elevations' which shows the height of the extension as 3 metres and 3.06 metres. The GPDO references height to be the height measured from the surface of the ground immediately adjacent to the building in question. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface next to the building. This would be the rear elevation of the extension where it would be furthest from the original dwellinghouse. At this point, the plans show that the extension would be less than 3 metres in height from ground level, due to the sloping ground. Consequently, the extension would not be caught by limitation (i).
9. Nevertheless, in considering that same drawing, which is integral to the application for the LDC, the height of the eaves of the extension is shown to exceed the height of the eaves of the existing dwellinghouse. Consequently, based on the submitted plans for the LDC, the appeal proposal would contravene limitation (d).
10. The original dwellinghouse has an 'L' shaped rear elevation, and this forms a side elevation. The appellant argues the intention of the GPDO legislation, interpreted by the Technical Guidance² on page 22, is to restrict the size of

² MHCLG Permitted development rights for householders Technical Guidance September 2019

extensions attached to the “outside” (side) wall of a property, because “it would serve no purpose at all if applied to “internal” (side) walls not visible from anywhere in the public domain”.

11. The Technical Guidance explains that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses often have more than two side elevation walls and the diagram to this explanation shows how side walls are not only the external face of the building. Consequently, I do not concur with the appellant’s argument on this point.
12. Nevertheless, the appellant provides that the section of the building that forms the ‘L’ shape to the rear elevation does not form part of the original³ dwelling but was a later “jerry-built” extension. I have not been provided with the plans for the original house and consequently my judgement is based on the drawings provided which show the dwelling in its existing and proposed form.
13. Even if I accepted that the “jerry-built” element was not part of the original dwellinghouse, setting it aside would still leave a side elevation being that of the projection of the living/dining room, which, from the evidence before me, appears to be part of the original property.
14. The plans which form part of the application show how the extension would extend beyond the rear wall of the original dwellinghouse and the wall forming a side elevation of the *original* dwellinghouse, notwithstanding that ‘side elevation’ would be no longer in situ. The Technical Guidance⁴ explains that where an extension fills the area between a side elevation and a rear wall, then the restrictions on extensions beyond rear walls and side walls will both apply. Consequently, the extension would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse. Based on the submitted plans for the LDC, the appeal proposal would contravene limitation (j).

Conclusion

15. For a proposal to be PD, it must meet all of the conditions and limitations in the relevant Class. In this case, limitations (d) and (j) are contravened. For the reasons given above, I conclude that the Council’s refusal to grant an LDC in respect of a single storey 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.

SA Hanson

INSPECTOR

³ “Original” - means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.

⁴ Page 23