



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2021

Appeal Ref: APP/Z4310/X/20/3259581

61 Woodhall Road, Liverpool L13 3EF

- 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 Dennis Hardy against the decision of Liverpool City Council.
 - The application Ref 20LP/1154, dated 29 April 2020, was refused by notice dated 1 June 2020.
 - 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 'Construction of single storey first floor extension built onto a ground floor one storey existing proportion of the original dwellinghouse and or existing ground floor one storey projection. The dimensions of the one storey extension is within the parameters of permitted development. The High Court Judgement Hilton. R 2016 supports the development of a extension attached to an existing extension then the phrase the enlarged part applied to only the proposed development that is a single storey extension therefore it is permitted. The footprint of the proposed extension is identical to the existing projection.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the original application form, noting that the Council in their decision notice used an abbreviated version. However, under section 192 of the Act there is no implied power to modify the description of the proposed development and there is no evidence which suggests that such wording was agreed by the appellant.
3. The application sought a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.
5. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties

have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.

6. It seems from the submissions that work on the proposed development may have begun although there is nothing to indicate it has been substantially completed.

Main Issue

7. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

8. The appeal property is an end of terrace two-storey house with a single storey projection to the rear.
9. The application sought to demonstrate that the erection of an extension above the existing projection would be development permitted by Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Class A permits the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations.
10. The proposed enlargement consists of a single storey and would join an existing projection. Whether or not the existing projection forms part of the original dwellinghouse, in order to be permitted development the proposed development must meet *all* [my emphasis] the limitations and conditions under each Class relevant to the proposal, in this case those in Class A.
11. Article 2(2) of the GPDO explains that any reference in the Order to the height of a building is to be construed as a reference to its height when measured from ground level. It also explains the meaning of ground level, being the level of the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground such as decking.
12. The Council stated that the height of the proposed extension would exceed four metres which the appellant did not dispute. Consequently, the proposed extension would fail to meet the Class A.1.(f)(ii) requirement as *the enlarged part of the dwellinghouse would have a single storey and exceed 4 metres in height*.
13. It would also fail to meet the Class A.1.(i) requirement as *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*. Hence it would not be permitted by Class A of Part 1 of Schedule 2 of the GPDO.
14. The appellant referred to and I have had regard to the judgement in *Hilton v SSCLG & Bexley LBC* [2016] EWHC (Admin), where it was held that the term 'enlarged part of the dwellinghouse' refers only to development comprising the enlargement of a dwellinghouse proposed to be carried out under Class A. Any previous extensions to the property were not to be included as being within the 'enlarged part' of the development for the purposes of paragraph A.1(f) and paragraph A.1.(g). However, this judgement has no bearing on the measurement of height.

15. Additionally, in order to benefit from the provisions of Schedule 2 Part 1 Class A of the GPDO the proposed extension must comply with the condition at paragraph A.3.(c) that is where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.
16. The roof pitch of the proposed extension does not have the same roof pitch as the original dwellinghouse, and the appellant has provided no explanation why it would not be 'practicable' to comply with this condition. Consequently, based on the evidence before me, it fails to comply with condition A.3.(c).
17. The proposal does not comply with all the limitations and conditions in Class A and therefore is not permitted by the GPDO. It follows that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the proposal 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.

Felicity Thompson

INSPECTOR