
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2021

Appeal Ref: APP/D5120/X/20/3258329

21 Frensham Road

- 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 Thomas Smith against the decision of the Council of the London Borough of Bexley.
 - The application, Ref 20/01538/LDCP, dated 4 July 2020, was refused by notice dated 25 August 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 the erection of a single storey side extension and rear extensions.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Preliminary Matter

2. It has not been necessary to carry out a site visit in this particular case. This is because all the information needed, including photographs, is included with the application and appeal documents. As such, a decision can be reached on the papers.
3. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. “Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit.” In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis.

Main Issue

4. The main issue is whether the Council’s decision to refuse to grant a certificate of lawful use or development was well-founded.

Reasons

5. The appeal relates to a semi-detached dwelling with an original single storey, half width, rear projection. The appellant proposes to demolish most of the walls of this projection leaving just a section of the outer corners. He would

then add the following: a rear extension, which would also be to one side of the rear projection, infilling just the existing lightwell area, and would also fall to be considered as a side extension (Extension A); an extension directly to the rear of the existing rear projection, which would extend from the remaining corner walls (Extension B); and an extension to the other side of the rear projection that would extend no further into the garden than the existing projection (Extension C). Extension A would have a lean to roof that would cut into the former hipped roof of the rear projection. Extension B would change this hipped roof to a crown roof and Extension C would have a pair of gable roofs with a valley gutter. These would be cut into what remained of the former hipped roof as well as the main roof of the dwelling, which has a catslide roof.

6. The Council advise that the site does not lie within a conservation area and there are no other constraints on the development.
7. The principle point at issue is the Council's determination that the works would result in an extension more than half the width of the original dwelling. This would not accord with paragraph A.1.(j) of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council accepts that in all other respects, the proposed development would accord with the limitations of Class A. I will return to this last point in due course.
8. Paragraph A.1.(j) requires where the enlarged part of the dwelling would extend beyond the wall forming a side elevation of the original dwelling, then the width should not be greater than half the width of the original dwelling. The Council state that the original width of the property is 8.92m but this is corrected by the appellant to 6.4m. It is not clear how the Council arrived at this figure as the dimensions on the drawings do not show this. Similarly, the Council conclude that the width of the "proposed extension" would be 5.22m but, again, it is not clear how this figure is derived, given there are three extensions and all the dimensions shown on the drawings, even if added together do not result in a figure of 5.22m.
9. None of the extensions would join each other and each could be built separately cutting into different sections of the original rear projection roof. Extension A, at 2.4m wide, would be built to the side of the existing rear projection but not beyond it. Extension B would simply extend the existing rear projection. Extension C would be another side extension at 2.35m wide. Neither Extension A nor Extension C would be greater than half the width of the original dwelling. This is stated to be 3.2m by the appellant and I note the Council do not take issue with this measurement in their response to the appeal. Furthermore, as the extensions would not be connected to each other, there is no requirement to consider the sum total of their widths.¹ As such, I find that they would accord with paragraph A.1.(j) of Class A of the GPDO.
10. Although not mentioned by either party, I find that Extension C would not accord with paragraph A.1.(k) of Class A as it would involve an alteration to the main roof. It therefore also falls to be considered against Class B ("Additions etc to the roof of a dwelling"). However, it would not accord with Class B.1.(e)(i) as it would include the alteration of a soil vent pipe. Nevertheless, this aspect of the development would accord with Class G ("Chimneys, flues etc

¹ Ministry for Housing, Communities and Local Government document Permitted development rights for householders: Technical guidance, September 2019, pages 23-28.

on a dwelling"). I also find that all the roof lights on all the extensions would accord with Class C ("Other alterations to the roof").

11. Overall, having regard to all aspects of the development, it is considered that the appellant's proposals would be lawful as they would comply with all the limitations of Classes A, B, C and G of the GPDO.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey side extension and rear extensions was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 4 July 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the extensions constitute development within the meaning of section 55 of the Act for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 since the development falls within Classes A, B, C and G of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming
Inspector

Date 22 January 2021

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First Schedule

Erection of a single storey side extension and rear extensions as shown on drawings numbered EX-01 and GA-01 dated July 2020.

Second Schedule

Land at 21 Frensham Road, London SE9 3RG.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated:

by D Fleming BA (Hons) MRTPI

Land at: 21 Frensham Road, London SE9 3RG

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Scale: not to scale

