



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/U5930/X/20/3253287

28 Windsor Avenue, Walthamstow, London E17 5NL

- 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 Mrs Tracy Marks against the decision of the Council of the London Borough of Waltham Forest.
 - The application, Ref 200181, dated 13 June 2019, was refused by notice dated 27 March 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 construction of a two storey side extension together with the construction of a hip to gable side roof extension.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, 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 of the appeal documents.
4. The application form does not contain a description of the development. However, the appellant has used the Council’s summary within the decision notice to complete their appeal form and I have therefore used this description in the last bullet point above. I will have regard to this description in making my decision as it reflects the information shown on the submitted plans.
5. Section 192(2) of the Town and Country Planning Act 1990 (the 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. Applying the terms of section 192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes A and B the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

6. For the avoidance of doubt, I would also point out that an LDC under section 192 is not the equivalent, in law, of a planning permission. Therefore, the issue of planning merits and the submissions by the appellant relating to the need for the accommodation and compliance with Council planning policies do not fall to be considered in this appeal.

Main Issue

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

Reasons

8. The appeal relates to a two storey, semi-detached house which has the benefit of a single storey, full width rear extension. The appellant proposes to erect a two storey, side extension which would be set back from the front elevation of the building. This would involve enlarging the main roof by changing its shape from a hip to a gable. The finished roof over the extension would be hipped. This extension would provide additional living space at ground level and two extra bedrooms at first floor level.
9. The Council advise that there are no Article 4 Directions removing permitted development (PD) rights with regard to extensions and the building is not listed. It is also not situated in a conservation area. The Council also find that the proposal complies with all the requirements of Class B "The enlargement of a dwelling consisting of an addition or alteration to its roof" and I see no reason to take a different view.
10. The principle point at issue is the location of the extension, its two storey design and how this relates to Class A "The enlargement, improvement or other alteration of a dwelling". Class A sets out development which falls within this class is PD provided it meets various criteria set out in paragraphs A.1.(a)-(l). The Ministry of Housing, Communities and Local Government have produced guidance which helps householders understand how PD can be exercised, entitled "Permitted development rights for householders: Technical Guidance" (TG) September 2019 and I will refer to the TG in my decision.
11. Class A, paragraph A.1.(e) states the development would not be permitted if the enlarged part of the dwelling would extend beyond the wall which (i) fronts a highway or (ii) forms either the principle elevation or a side elevation of the original dwelling.
12. The appeal property is positioned at an angle on the junction of Windsor Avenue and Mount Pleasant Road. As such, both the principle elevation and the side elevation front Windsor Avenue due to the position of the dwelling in relation to the road. This is the case for the purpose of interpreting the GPDO even though the property fronts the road at an angle. (Page 7 of the TG explains the principle elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house). The position of the extension would also be an extension to the side elevation of the property.

I therefore find that the development would not accord with paragraph (e) of Class A.

13. Class A paragraph A.1.(h)(ii) states that development would not be permitted if the enlarged part of the dwelling would have more than one storey and would be within 7m of any boundary of the curtilage of the dwelling opposite the rear wall of the dwelling.
14. The proposed two storey extension would extend beyond the rear of the property to adjoin the existing rear extension. As such, it would be within 7m of the rear boundary of the property which borders the double garages adjacent to No 26 Windsor Avenue. I find for this reason the development would not accord with paragraph A.1.(h)(ii).
15. I also find the development would not accord with paragraphs A.1(i) and (j) as the extension would be within 2m of the boundary of the curtilage of the property and the height of the eaves of the extension would exceed 3m. In addition, the proposed side extension would exceed 4m in height, have more than one storey and would have a width greater than half the width of the original dwelling.
16. The appellant refers to other similar developments in the area to support his appeal. However, as I set out at the start of my decision, planning merits do not fall to be considered when determining whether a proposed development would be lawful. The Council state that none of the developments referred to benefit from either express planning permission or an LDC. Notwithstanding this, the appellant's appeal is confined to establishing the lawfulness, or otherwise, of the proposed development at the appeal site.
17. To summarise, whilst the alterations to the main roof would accord with Class B of the GPDO, the proposed two storey side extension would not accord with several of the limitations set out in Class A. Overall therefore, the proposed development would not benefit from the PD set out in Schedule 2, Part 1, Class A of the GPDO and would therefore not be lawful.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a two storey side extension together with the construction of a hip to gable side roof 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.

D Fleming

INSPECTOR