



Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Appeal Ref: APP/N5090/X/20/3261594

27 Sandringham Road, Golders Green, London NW11 9DR

- 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 Nic Trebino against the decision of the Council of the London Borough of Barnet.
- The application Ref 20/3613/192, dated 5 August 2020, was refused by notice dated 2 September 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 for "Single storey rear extension. Erection of a rear outbuilding".

Summary decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the formal decision.

Procedural Matters

1. The description in the heading is taken from the appeal form and decision notice, which succinctly and adequately describes the development. The description on the application form is lengthy and includes unnecessary dimensions to describe the permitted development criterion the development accords with. On the appeal form the appellant has used the Council's description and in his Statement quotes the Council's description as being the basis for the appeal. In doing so the appellant has agreed to the Council's description. Nonetheless the appellant has since confirmed he agrees to the use of the Council's description. I shall proceed on that basis.
2. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.
3. The purpose of an LDC application made under section 192 of the Act is to find out whether a future development, as described, would be lawful on the date the application was made.
4. The onus is on the applicant to provide all the relevant information and evidence to support his case. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority. Planning merits are of no relevance.

Main Issue

5. The main issue is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

6. The appeal property is a mid-terraced dwelling. The proposed development comprises two elements, namely the erection of a single storey rear extension for a kitchen with 2 rooflights, and the erection of a separate garden outbuilding, which the submitted plans annotate for 'garden store'. The extension would have a mono pitched tiled roof and the walls would be rendered, both to match the existing. The outbuilding would be timber clad and have a fibreglass flat roof.
7. The Council has assessed both structures against Article 3 and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO') as to whether the single storey rear extension would be permitted development under Class A, and whether the outbuilding would be permitted development under Class E.
8. The Council advise that there are no Article 4 Directions in place or conditions imposed which would restrict permitted development rights. Furthermore, the site does not lie within a Conservation Area and the dwelling is not a Listed Building.
9. Both Class A and E are subject to conditions and limitations, which are expressed precisely, such that something is either permitted development or it is not. The Council states that separately the extension and the outbuilding each meet all the limitations and conditions of Class A and Class E respectively.
10. However, the Council's reason for refusal is that cumulatively the extension and outbuilding comprise a side and rear extension that should be assessed under Class A. This is because there would not be a 'material' gap between the side of the extension and the outbuilding. The Council gives no indication of what size the gap must be in order to be 'material'. If each structure would be permitted development in its own right, as the Council states, the issue is whether the structures should be assessed together as a single extension under Class A.
11. There is nothing that would require the appellant to build the extension and outbuilding at the same time, even if determined together in the same application. However, the application includes both structures and therefore it is reasonable for the Council to consider them as one project.
12. Prior to 2008, the GPDO did stipulate that buildings with a volume greater than 10 cubic metres and sited less than 5 metres from the dwelling were to be treated as an enlargement of the dwelling and considered under Class A. However, in the version of the GPDO in force on the date the application was made, there is no such commentary, condition or limitation that stipulates that an outbuilding must be set a minimum or certain distance from the dwelling or a Class A extension.
13. The Government's Technical Guidance¹ provides some clarification that buildings which are *attached* [my emphasis] to a house are not permitted under Class E. It therefore follows that a Class E building must be separated from the dwelling by a gap of some sort, however small, otherwise it would be attached and would be an extension. It also follows that as a Class A

¹ Permitted development rights for householders - Technical Guidance. Published by MHCLG Sept 2019

extension would become part of the dwelling, a Class E building must also be separated from the extension in order to not be attached and remain a Class E building.

14. From looking at the submitted plans, the proposed outbuilding would be separated from the rear of the house by some distance. It is also a fact, shown annotated on proposed plan 2002-01_LD2_211, that the proposed extension and outbuilding would be separated from each other by only a 200mm gap and would not touch each other.
15. The Technical Guidance contains illustrative examples for guidance showing how various combinations of Class A extensions should be considered. One includes a scenario where a new extension is joined to a previous extension - this does require account to be taken of the size of the proposed extension together with the previous extension to assess the overall enlargement in terms of the limitations and conditions of Class A extensions.
16. However, none of these examples address the scenario of where an extension and outbuilding are both proposed to be built very close together. Nor does the GPDO require, or the Technical Guidance suggest, that in such circumstances the proposal should be considered as though it is one development. In my view, provided a Class E building does not touch the dwelling or an extension to it, however small the gap or separation may be, it remains a Class E building and is not combined or considered as part of a Class A extension.
17. Both parties have referred to, and quoted from, a number of appeal decisions. I have not been provided with full details of any of them, and significantly I have not been provided with any plans to be sure of the context of each to determine how comparable they are to the appeal proposal before me. Whilst consistency in decision-making is important, all decisions turn on their own particular circumstances and context based on the evidence before each Inspector, a fact borne out by the contrasting decisions presented by each party. Consequently, I am unable to comment or draw any meaningful comparisons. In any event I must consider the appeal proposal before me on its own merits.
18. I am satisfied, on the evidence before me, that the proposed development would fall within Classes A and E respectively. There is nothing that directs me to consider them as side and rear extensions under Class A. Consequently, I find the proposed development would have been lawful at the time the application was made.
19. If the proposed development was built and used in a different manner from that put to me, or the structures were made to attach, connect or link to the dwelling or each other in some way, or there was any change to the circumstances or any of the factors I have considered, then the extension and outbuilding and their use may no longer be lawful.
20. I note from the plans there are no doors shown on either the rear of the dwelling or extension to exit the property – only windows. Furthermore, access to the rest of the rear garden would only be through the proposed outbuilding itself, because the 200mm gap between the side of the outbuilding and proposed extension would not be wide enough for even a very slim

person to walk through. Nevertheless, the planning merits and living conditions of the occupiers fall outside the consideration of what is lawful.

Conclusion

21. For the reasons above I conclude, on the evidence available, that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

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

K. Stephens
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 5 August 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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:

Under Article 3 and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, the proposed single storey rear extension would be granted planning permission by Class A and the rear outbuilding would be granted planning permission by Class E, and as shown on submitted proposed drawings 2002-01_LD2-211 and 2002-01_LD2-212.

Signed

K Stephens

Inspector

Date: 27 May 2021

Reference: APP/N5090/X/20/3261594

First Schedule

Single storey rear extension and erection of a rear outbuilding as shown on the submitted proposed drawings 2002-01_LD2-211 and 2002-01_LD2-212.

Second Schedule

Land at 27 Sandringham Road, Golders Green, London NW11 9DR

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: 27 May 2021

by K Stephens BSc (Hons) MTP MRTPI

Land at: 27 Sandringham Road, Golders Green, London NW11 9DR

Reference: APP/N5090/X/20/3261594

Scale: Not to scale

