
Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/M5450/X/20/3263237
148 Kenton Lane, Harrow HA3 8UG

- 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 Yogesh Mistry against the decision of the Council of the London Borough of Harrow.
- The application Ref P/2847/20, dated 13 August 2020, was refused by notice dated 9 October 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 proposed use or development is sought is a single storey rear extension (partial demolition of detached garage and demolition of existing rear extension).

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. The appeal concerns whether the development described in the application would have been lawful if begun at the time of the application, and whether the Council's refusal to issue a certificate was well-founded. It does not require any consideration of the merits of the proposed development and hence, after seeking the views of the parties, I have considered it unnecessary to visit the site prior to determining the appeal.
2. The application form describes the proposed development simply as a 'single storey rear extension'. The more extensive description given in the headnote above is taken from the Council's notice of refusal of the application.
3. The appellant's reasons for considering the proposed development to be lawful, giving the grounds for the application, are stated in the application to be 'the existing use/building has been there for many years'. The existing use is described as Use Class C3. However the longstanding existence of a use would not of itself authorise any operational development for which planning permission is required by reason of section 57 of the 1990 Act. The issue arising from the Council's notice of refusal appears to be whether the proposed development would have benefitted, on the date of the application, from any planning permission granted by the Town and Country Planning (General Permitted Development)(England) Order 2015 ("the Order").

Main Issue

4. The Council's notice of refusal states their view that the proposal would not benefit from any grant of planning permission conferred by the Order. The

main issue arising in the appeal is whether the Council's view is correct and hence whether their refusal to grant a lawful development certificate in the terms sought was well-founded.

Reasons

5. There is no dispute that the proposed development amounts to operational development for which planning permission is required. Article 3(1) of the Order grants such a permission for the classes of development described as permitted development in Schedule 2. The permission granted by article 3 is subject to a number of general restrictions, none of which are said to apply here.
6. Part 1 of Schedule 2 sets out the classes of permitted development within the curtilage of a dwellinghouse. Class A concerns the enlargement, improvement or other alteration of a dwellinghouse, and grants permission for such works. However development is not permitted by Class A if, subject to paragraph A.1(g), the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse or 3 metres in any other case.
7. Here, the proposed rear extension is said to be 6m deep and thus exceeding the tolerances of Class A as set out in paragraph A.1(f). It is therefore not permitted by Class A subject to what paragraph A.1(g) has to say.
8. Paragraph A.1(g) sets out that in certain circumstances a rear single storey extension may extend to 6 or 8 metres, depending on whether a dwellinghouse is detached. The 6m extension here falls within the tolerance of paragraph A.1(g) and is thus potentially permitted development under Class A.
9. Paragraph A.4 sets out several conditions that apply to development permitted by Class A that exceeds the limits of paragraph A.1(f) but which may be allowed by paragraph A.1(g), as here. The developer must supply the Council with a written description of the proposed development setting out (among other matters) its length, height and eaves height. The Council must then supply this information to neighbours and may subsequently require the Council's prior approval of the proposal.
10. If none of the neighbours object, on the basis of the description of the proposed development, the Council may determine that prior approval is not required. That is what appears to have happened here: the Council's recital of the planning history is that prior approval was 'not required' on application P/0920/20/PRIOR.
11. As well as the description of the proposed development that the Council needs to share with neighbours, the developer must also submit (among other matters) a plan indicating the site and showing the proposed development. This was done here, but the plan 'showing the proposed development' shows a rather different development from that for which the certificate is now sought. The development for which a certificate is now sought includes the addition of a window in the side elevation which was not shown on the application plans for P/0920/20/PRIOR.
12. That is not necessarily fatal, because paragraph A.4(11) allows for some variation to the details when the development is carried out. Where, as here,

the Council has determined that prior approval is not required, the Council and the developer may agree that the development when constructed can depart from the details previously supplied. However any such variation does require the agreement of the local planning authority.

13. There is no evidence before me to suggest that the Council have agreed to depart from the details shown on the application plan for P/0920/20/PRIOR, or had reached any such agreement on or before 13 August 2020, being the date of the lawful development certificate application. Although it may be that the neighbour has no objection to the addition of the window, I nonetheless consider that its inclusion amounts to a materially different development from that previously considered by the Council. Thus it follows that to construct the development in accordance with the current application plans would be to develop in breach of the condition of A.4(11)(b) of part 1 of Schedule 2 to the Order. Therefore the development for which a certificate is sought would not be authorised by the Order, and therefore cannot be certified as development that would have been lawful on the relevant date.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension (partial demolition of detached garage and demolition of existing rear 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.

Formal Decision

15. The appeal is dismissed.

Laura Renaudon

INSPECTOR