



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Appeal Ref: APP/C5690/X/20/3263986

15 Horniman Drive, London SE23 3BJ

- 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 Anthony Heal against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/118440, dated 17 September 2020, was refused by notice dated 19 November 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 a single storey infill side extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether or not the Council's decision to refuse to grant the LDC was well-founded.

Reasons

3. The proposed development would involve removal of a redundant external chimney and construction of a small single storey infill extension with a floor space of roughly 5sqm. Internally it would accommodate a corridor and WC and provide access to an existing utility room. Externally it would provide access to the rear garden through a door and steps. It would be clad in tiles that match those existing and the roof would be in felt to match that on the rear extension which it would adjoin.
4. The appellant says that the proposal would not be visible from the road or from adjacent houses, nor would it overlook the windows or gardens of adjacent houses. A neighbour disagrees. However, in a LDC appeal I cannot consider the merits of a proposal but rather must make a decision as to its lawfulness.
5. The appellant says that the extension would be "within the limits set by permitted development rights", and this is the matter upon which I must determine the appeal as there is no express planning permission which would otherwise make the development lawful. The Council has refused the scheme on this basis, saying (a) it would consist of a raised platform exceeding 0.3m in height and (b) the enlarged part of the dwellinghouse (proposed and existing extensions) would extend beyond a wall forming the original side elevation and would have a width greater than half the width of the original dwellinghouse.

Raised Platform

6. Drawings submitted with the application show what appears to be a raised platform proposed to the side of the intended extension. The officer report states the height of the raised platform to be 0.58m. It is not explicit in the report where this figure has come from, but I expect it to have been derived from measurement from the scaled plans.
7. Article 3(1) and Schedule 2, Part 1, Class A, A.1.(k)(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) does not permit the enlargement, improvement or other alteration of a dwellinghouse if it would consist of or include the construction or provision of a verandah, balcony or raised platform. "Raised" means a platform with a height greater than 0.3 metres. Even taking into account the non-uniform ground levels adjacent to the building shown in the plans, I am not satisfied that the height of the platform would be 0.3m or less.

Enlarged part of the dwellinghouse – extension past side elevation – width

8. The application says that the extension would adjoin the (existing) rear extension, and the drawings support that.
9. Article 3(1) and Schedule 2, Part 1, Class A, A.1.(j)(iii) of the GPDO does not permit the enlargement, improvement or other alteration of a dwellinghouse if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse. In respect of this, it is important to note that the GPDO does not permit¹ such development if total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) would have a width greater than half the width of the original dwellinghouse.
10. It is clear from the plans that the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
11. Further, it is also clear from the plans that the width of the proposed extension together with the width of the rear extension (to which the appellant has confirmed it would adjoin) would have a width greater than half the width of the original dwellinghouse.

Conclusion

12. On the basis of the evidence submitted by the appellant, I am not satisfied on the balance of probabilities that the proposal would be lawful.
13. 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 infill side 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.

Andrew Walker

INSPECTOR

¹ Article 3(1) and Schedule 2, Part 1, Class A, A.1.(ja)