



Appeal Decision

Site visit made on 12 October 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/T5720/X/20/3262015

15 Belvedere Avenue, Wimbledon Village, London SW19 7PP

- 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 Andrew Wells of 3W Architecture Limited against the decision of the Council of the London Borough of Merton.
- The application Ref 20/P2107, dated 29 June 2020, was refused by notice dated 5 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 to extend the existing basement out to the full extent allowed under permitted development rights.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 10 November 2021.

Decision

1. The appeal is dismissed.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the applications, be lawful.
3. The appeal site is a detached dwelling in the north Wimbledon Conservation Area. It has previously been extended, including with a basement. The appellant's case is that the extension to the basement would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) Schedule 2 Part 1 Class A. The Council refused to grant the certificate as it determined that the extension would be a side extension that would have a width greater than half the width of the original dwellinghouse and would extend beyond a wall forming a side elevation of the original dwellinghouse.

4. Under Class A Schedule 2 Part 1 of the GPDO, the enlargement, improvement or other alteration of a dwellinghouse is permitted development, subject to a number of limitations in paragraphs A.1 and A.2. The limitation in A.1(j)(iii) is that if the enlarged part of the dwellinghouse extends beyond a side elevation of the original dwellinghouse and has a width greater than half the width of the original dwellinghouse, it is not permitted development.
5. The site is within a designated conservation area and is therefore on Article 2(3) land. Paragraph A.2 sets out that in the case of a dwellinghouse on article 2(3) land, development is not permitted if (b) it would extend beyond a wall forming a side elevation of the original dwellinghouse.
6. The 'original' dwellinghouse is defined in Article 2 of the GPDO as (a) the building as it existed on 1 July 1948, or (b) in relation to a building built on or after 1 July 1948, as so built. I have not been provided with details of when the dwellinghouse was built.
7. Details of the planning history of the property have been provided. Drawings submitted with an application in 2013¹ indicate the extent of the property at that time. It was arranged over three floors with an attached garage to one side, and did not include a basement. The permission does not appear to have been implemented and a further permission was granted in 2015², which includes similar drawings showing the dwelling as existing. The Council makes reference to an earlier permission for alterations to existing dormer windows to the front, rear and side elevations granted in 1965³ but drawings have not been provided. Therefore, in the absence of any information to the contrary, I am taking the 'original' dwelling to be as it stood prior to the extensions permitted by the 2015 permission being built.
8. The 2015 permission resulted in a number of extensions, including the demolition of the attached garage to the left hand side (when facing the property from the road) and its replacement with an upper floor art room and a basement extension below. From my reading of the drawings, it appears that the side elevation of the art room and basement was built in a similar position to the side elevation of the garage. However, to the rear of the art room the extension added a WC and a 'glasses and drinks' area accessed from the drawing room at the rear of the house. This element extended beyond the left hand side elevation of the original house and was beyond the footprint of the original garage.
9. To the right hand side, the property was extended to add a new garage at ground floor level, and to extend an existing study and larder area to the side and rear. This is beyond the 'original' side elevation of the house. The basement that was added at that time does not appear to extend beyond the original side walls of the house, if one takes a vertical line downwards from the extent of the ground floor side walls.
10. However, the proposed basement would extend beyond the original left hand side elevation by creating the store underneath the 'glasses and drinks' area. It would also extend beyond the original right hand side elevation in the area of the cinema room and the gym, part of which would be underneath the

¹ Ref 13/P2871

² Ref 15/P0250

³ Ref MER142/65

extended snug/study and garage. The proposed basement extension would therefore extend beyond a wall forming a side elevation of the original dwellinghouse. It would not comply with paragraph A.2(b).

11. Furthermore, when taken together, the existing and proposed basement would have a width greater than half the width of the original dwelling and would not comply with the limitation in A.1(j)(iii). It is clarified in A.1(ja) that the limitation applies to any total enlargement, being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined.
12. The appellant argues that as the basement did not exist on 1 July 1948, the side elevations do not form any part of the original dwellinghouse. However, the relevant limitations refer to the side elevations of the original dwellinghouse, and do not specify that the side elevation must be at the same level above or below ground as the part of the dwelling to be extended.
13. The appellant has provided two appeal decisions⁴ where inspectors found that the side elevation of an original extension was demolished prior to the extension in question being constructed and therefore no longer formed the side elevation of the original dwelling. However, the GPDO does not state that the original dwellinghouse must still exist in its original form in order to qualify as the original. It has been established by case law that even if original walls are demolished then the limitations still apply. In any event, in this case, the original side elevations of the dwellinghouse are still in existence.
14. For the reasons set out above, the development does not comply with the limitations of Class A as it extends beyond the side elevation of the original dwellinghouse in a conservation area, and is a side extension that has a width greater than half the original dwellinghouse. Planning permission is therefore required.
15. I conclude that the Council's refusal to grant a certificate of lawful use or development to extend the existing basement out to the full extent allowed under permitted development rights is well-founded, and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR

⁴ Ref APP/H5960/X/09/2115991 and Ref APP/M3645/X/10/2131184