



Appeal Decision

Site visit made on 8 November 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 6 December 2021

Appeal Ref: APP/T0355/X/21/3278798

45 Summerleaze Road, Maidenhead SL6 8EW

- 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 Muhammad Shafiq Khan against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 21/00237, dated 27 January 2021, was refused by notice dated 25 March 2021.
 - 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 described as 'Part single part double rear extension. Structure is already completed however first floor will be modified to comply with PD Class A as indicated in the attached proposed drawings'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal application was for a lawful development certificate (LDC) for operational development which has already been carried out. It is clear though from the application plans and from development seen on site that the application was intended as a proposed development comprising of modifications to an existing extension.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This turns on whether the proposal would be lawful in the terms of s191(2) of the Town and Country Planning Act 1990 as amended (1990 Act).

Reasons

4. Section 191(2) of the 1990 Act states that operations are only lawful if no enforcement action may be taken in respect of them (for example, because they represent permitted development under the GPDO), and provided that they do not constitute a contravention of any of the requirements of any enforcement notice currently in force.
5. The appeal property is a detached dwelling which has a two storey rear extension across the full width of the house. Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England)

Order 2015 as amended (GPDO) grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse. However, as constructed, the rear extension does not accord with the limitations contained within Schedule 2, Part 1 A.1(i) of the GPDO in that the enlarged part of the dwellinghouse would be within 2 metres of the side boundaries, and the height of its eaves would exceed 3 metres.

6. The proposal is to modify the existing extension, so that the first floor part of the extension is set in from the side boundaries. The appellant's view is that this modification would bring the extension within Class A of Schedule 2 Part 1 of the GPDO. However, the GPDO does not grant retrospective planning permission; an extension will only be permitted development if it complied with the GPDO limitations when it was constructed. As such, it will not become permitted development under the GPDO if and when it is altered later.
7. Further, even leaving the above issue aside, my view is that the extension as proposed would not in any event comply with the conditions in Class A. The extension would effectively still be one single enlargement, part of which (the single storey part) would be within 2 metres of the side boundaries and part of which (the two storey part) would have eaves exceeding 3 metres. Thus it would not comply with Schedule 2, Part 1 A.1(i) of the GPDO.
8. In addition, I note that there is an enforcement notice in force¹ which appears to relate to the two storey extension seen on site. The appellant has not shown on the balance of probabilities that the appeal proposal would not constitute a contravention of any of the requirements of that enforcement notice.
9. I have had regard to the LDC granted for a development where the first floor extension was 2 metres from the fence line². However, I do not have full details of that case to make a comparison with the appeal proposal and must determine the appeal based upon my interpretation of the relevant legislation. As such, on the evidence before me, the proposal would not comply with either limb of s191(2) of the 1990 Act and so would not be lawful.

Conclusion

10. For the reasons given, I conclude that the Council's refusal to grant a certificate of lawful use or development for the operational development described in my banner heading above 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.

V Bond

INSPECTOR

¹ Ref 18/50263/ENF

² Ref PL/21/1112/SA