



Appeal Decisions

Site visit made on 18 November 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 December 2021

Appeal A - Ref: APP/E5330/X/21/3268655

334 Shooters Hill Road, Blackheath, London SE18 4LS

- 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 Alabi Agbalaiya against the decision of Royal Borough of Greenwich Council.
 - The application Ref 20/3876/CP, dated 15 December 2020, was refused by notice dated 8 February 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 development is sought is 'demolition of existing rear extension; Construction of rear/side infill extension and conversion of garage into habitable room; Loft conversion comprising windowed gable end, 2 front rooflights and rear dormer window with juliet balcony'.
-

Appeal B - Ref: APP/E5330/X/21/3273202

334 Shooters Hill Road, Blackheath, London SE18 4LS

- 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 Alabi Agbalaiya against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/0638/CP, dated 18 February 2021, was refused by notice dated 15 April 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 development is sought is 'demolition of existing rear extension and construction of a hip-to-gable roof extension, rear dormer roof extension, single storey rear infill extension, conversion of garage to habitable room and installation of two rooflights on front roof slope'.
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Main Issue

3. The main issue in each of the appeals is whether the Council's decision to refuse to grant an LDC was well founded.

Preliminary Matters

4. Where an LDC is sought, the onus of proof is on the appellant to demonstrate that the proposed development would be lawful, and the standard of proof is on the balance of probabilities. The planning merits, for example, relating to effect of a proposal on the character and appearance of the area or the living conditions of neighbours, are not relevant in deciding an LDC application or appeal.
5. The appeal site is a semi-detached dwelling with a single storey rear extension, a side garage and a first floor side extension above the garage. It is proposed to demolish the existing rear extension, and to convert the loft, incorporating a gable end, two front rooflights and a rear dormer window with balcony. It is also proposed to convert the garage into a study with an ensuite shower room. The Council raise no issue with these elements of the proposal.

Reasons

Appeal A

6. At the back of the house, it is proposed to add a new ground floor extension between the existing kitchen and the boundary wall which would approximately double the size of the kitchen.
7. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out permitted development (PD) rights for the enlargement, improvement or other alteration of a dwelling house, subject to a number of conditions and limitations. The 'Permitted development rights for householders – Technical Guidance' (Ministry for Housing, Communities and Local Government, September 2019) provides some interpretation of Class A and its limitations.
8. The new side extension would project from the rear wall of the existing garage. That being the case, it is necessary to consider the extent of the original building, and whether or not the side extension forms part of the original building. The Technical Guidance defines 'original' as the building as it existed on 1 July 1948 where it was built before that date, or as it was built if built after that date.
9. In his statement of case, the appellant refers to the existing rear extension as forming part of the original house. However, he provides little documentary evidence to establish the size of the original house, and moreover, does not refer to the age of the side extension, which is crucial to my consideration.
10. Paragraph (ja) provides that development is not permitted if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) would exceed the limits set out in paragraphs (e)-(j). Of these, (i) and (j) are relevant in this case.
11. With regard to paragraph (i), the new extension would be within 2m of the boundary of the dwellinghouse. In such an instance, the extension would not be permitted if the height of its eaves would exceed 3m. Turning firstly to the drawings, no eaves height is shown and indeed the proposed rear elevation appears to be labelled 'Existing Rear Elevation', which does not assist in terms of the clarity of the submitted information. In his statement of case, the

appellant refers to a flat roof with a total height of 3m, but this information cannot be relied on in the absence of clear drawings.

12. Even if it can be demonstrated that the proposed extension would not exceed 3m, it is still necessary to understand whether or not the existing side extension is part of the original house. If it is not, then the total enlargement, which is both the existing and proposed extensions combined, would certainly exceed 3m at the eaves. As I am unable to determine the extent of the original dwelling, I am unable to determine whether or not paragraphs (i) and (ja) would be satisfied.
13. Turning to the relevant parts of paragraph (j), the proposed extension would not be permitted if it would extend beyond a wall forming a side elevation of the original dwellinghouse, and would exceed 4m in height or be more than a single storey. As previously, the extent of the original house needs to be established. As above, if both the existing and proposed side extensions need to be taken as a total enlargement, then that total enlargement would certainly exceed a single storey, taking it outside the limitations of paragraphs (j) and (ja).
14. As noted above, the onus lies clearly on the appellant to show that the proposed side extension would be permitted under Class A. As he has not supplied the vital information relating to the dimensions of the original house, I am unable to conclude that the side extension would fall within PD rights.
15. Appeal A therefore fails.
16. I have had regard to the Council's first reason for refusal, which relates to inconsistencies in the submitted drawings. However, in view of my findings above, there is no need to consider further any matters relating to the drawings.

Appeal B

17. Appeal B appears to be a resubmission of the scheme that was the subject of Appeal A above. With the production of the drawing '501 Resubmission', it seems that the appellant sought to address the Council's concerns over the drawings submitted with application ref: 20/3876/CP. The main change is within the 'Proposed flank elevation' element of the drawing. This revision gives greater clarity in showing that the proposed side infill extension will have a flat roof, and that no part of the structure will extend beyond the rear line of the main body of the house. This is taking into account that the existing rear extension will be demolished.
18. Whilst these changes to the plans are helpful, the issues considered in Appeal A remain. Specifically, it is still necessary to establish the dimensions of the original building, and whether or not the existing two storey side extension forms part of the original building, when assessed against the definition given in the Technical Guidance. No further information has been produced in support of Appeal B that would assist with identifying the original dimensions of the house.
19. That being the case, I am unable to be certain that the proposed side extension would fall within all the conditions and limitations of Class A, and would thus be permitted development.

20. Appeal B therefore fails.

Conclusion

21. As set out in the National Planning Policy Guidance (Paragraph: 005 Reference ID: 17c-005-20140306), the refusal of an LDC does not preclude another application being submitted at a later date, if more supporting information can be produced.
22. Nevertheless, for the reasons above, I consider that the Council's refusal to grant an LDC for the proposed development in each case was well-founded, and so Appeals A and B are dismissed.

Elaine Gray

INSPECTOR