
Appeal Decision

Site visit made on 5 January 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Appeal Ref: APP/Z5060/X/21/3281922

43 Alfred's Gardens, Barking IG11 7XW

- 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 M Htike against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 21/01218/CLUP, dated 30 June 2021, was refused by notice dated 16 August 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 a "ground and first floor rear extension".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site visit procedure was altered from an accompanied site visit to an access required site visit, as the Council Officer was not present when I arrived at the appeal site during the pre-arranged time and date. Both parties were subsequently written to explaining the change in procedure and raised no objection to this. As such the appeal will be determined on that basis.
3. The certificate seeks to establish whether the works would have been lawful on the date of the application. 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 facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed extensions would be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

5. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse. The appellant seeks to establish that the proposed ground and first floor rear extension would be granted permission by virtue of Class A. Paragraph A.1 and A.2 sets out limitations which proposals must adhere to benefit from permitted development rights.
6. The Council determined that the proposed rear extension fails to meet part A.1 (j)ii) of Schedule 2, Part 1, Class A of GPDO. Paragraph A.1(j) states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would:
 - (i) exceed 4 metres in height,
 - (ii) have more than a single storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse.
7. Article 2 Interpretation (1) of the GPDO defines 'original' as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1st July 1948, as so built. The existing end of terrace dwelling contains a two storey back addition, and there is no dispute between the parties that the two storey back addition forms part of the original building. Indeed, this is clear from its character, form, and appearance, which is similar to other two storey back additions in the terrace. The appellant's grounds of appeal also states that this existing two storey projection is "original when the house was constructed".
8. The Government's Technical Guidance (TG)¹ whilst not determinative provides a useful guide to interpretation of the GPDO. The TG (p.22 and 23) provides helpful guidance and diagrams which illustrate what constitutes a wall forming a side elevation of a house. The TG indicates that a wall forming a side elevation will be any that cannot be identified as being a front wall or a rear wall. The TG further states that *"Where an extension is beyond any side wall, the restrictions in (j) will apply. Any extension can only be a single storey, must be less than 4 metres in height and can not be more than half the width of the original house."*
9. The development would comprise a two storey rear extension projecting 3m from the rear main wall of the main house, to the side of the original two storey back addition. As a matter of fact, the proposed extension would extend beyond a wall forming a side elevation of the original dwellinghouse (that being the side wall of the two storey back addition), would exceed 4 metres in height and would have more than a single storey, contrary to the limitations in paragraph A.1(j)i) and ii) of Part 1, Class A of the GPDO. I therefore agree with the Council that the proposed extension is not development permitted by the GPDO.

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

10. Whilst not specifically referred to in the Council's Decision, the Delegated Officer's Report also states that the proposed two-storey rear extension would be within 7 metres of the boundary of the curtilage of the dwellinghouse being enlarged and therefore fails to comply with limitation A.1 h) (ii) of Part 1, Class A of the GPDO. However, very limited evidence has been submitted to demonstrate that the proposed development would comply with this and in order to be permitted development the extension must meet all of the limitations and conditions of the GPDO. Given that I have already found above that the proposed extension is not development permitted by the GPDO, I needn't consider whether it would comply with limitation A.1 h) (ii) of Part 1, Class A of the GPDO. The parties may wish to revisit this matter should another proposal ever resurface under a new application.

Conclusion

11. The development is not one that complies with all of the limitations of Article 3, Schedule 2, Part 1, Class A respectively of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the ground and first floor 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.

R Satheesan

INSPECTOR