



Appeal Decision

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2022

Appeal Ref: APP/K5600/X/21/3277716

49 Wallingford Avenue, London, W10 6PZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Keith Macrae (Heli Ltd Architects) against the decision of Royal Borough of Kensington and Chelsea.
 - The application ref CL/21/02472, dated 17 April 2021, was refused by notice dated 18 June 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 the erection of a 3m deep rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Preliminary Matters

2. The Council's decision notice and the appellant's written representation refer to drawing number PD PSE 100 Rev E. However, the plan submitted with the appeal is Rev B. In response to my request for clarification on this matter, the appellant confirmed that the correct drawing is Rev B. The Council did not respond. I have determined the appeal on the basis of Rev B.
3. I wrote to the parties to advise that, having reviewed the representation and evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision and that not doing so would not be prejudicial to any party. No objections were received.
4. I have noted the submissions made by interested parties on issues which include character and appearance, living conditions and environmental pollution. However, an application under s192(1)(b) of the 1990 Act¹ seeks to ascertain whether the proposed operations would be lawful. Such applications are determined on the basis of fact and law, and this means that the planning merits of the extension can form no part of my assessment as to whether an LDC should be granted.
5. In an LDC appeal the onus of proof is on the appellant to show, on the balance of probabilities, that the development would be lawful at the time of the application.

¹ The Town and Country Planning Act 1990 as amended

Main Issue

6. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. That turns on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

7. The proposal is for a 3m rear extension to a two storey terrace dwellinghouse. The proposed plans show that the extension would be 2.73m wide and 4m high and would replace an existing single storey flat roof extension.
8. Class A of Part 1 of Schedule 2 of the GPDO (hereafter referred to as Class A) provides, subject to limitations and conditions, that the enlargement, improvement or other alteration of a dwellinghouse is permitted development.
9. The appeal dwelling is located within the Oxford Gardens Conservation Area, which, for the purposes of the GPDO, comprises Article 2(3) land. The additional limitations set out in paragraph A.2 are therefore applicable, as well as those of paragraph A.1 (of Class A).
10. The main focus of the dispute relates to limitation A.2.(c) which states that development is not permitted by Class A *if the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse*. The Council considers that the proposal would be in breach of this limitation because its height equates to one and a half storeys, with the top of the extension finishing at the mid-point of the first floor level.
11. There is no definition of a storey within the GPDO or MHCLG Technical Guidance². On that basis the Council has used the storey height of the host dwelling as its point of reference of what constitutes a storey and that a single storey should match the height of the adjacent storey of the host property in order to qualify as development permitted under Class A.
12. I do not agree with that approach. Although the proposal would have a high floor to ceiling space, the plans do not show that sub-divided into more than a single storey. I fully understand the concerns of the Council in that *"the absence of floors within an extension cannot be the main characteristic of a 'single storey' extension, as it could not be the case that an extension taller than the parent building could be 'permitted development' just because it was a single vertical space, undivided by floors."* However, such a scenario would be prevented by limitation A.1.(c) which states that development is not permitted by Class A *if the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse*.
13. In any event, the maximum height of a single storey extension is controlled by limitation A.1.(f)(ii), which states that development is not permitted by Class A *if the enlarged part of the dwellinghouse would have a single storey and exceed 4 metres in height*. As the proposed extension does not exceed that

² Ministry of Housing, Communities and Local Government - Permitted development rights for householders Technical Guidance - September 2019

maximum height and no more than one storey is shown on the plans, I find, on the balance of probabilities, that it would not have more than a single storey for the purposes of limitation A.2(c).

14. The Council also confirms, and I agree, that the extension would not extend beyond the rear wall of the original dwellinghouse by more than 3m so as to be breach limitation A.1.(f)(i).
15. It has thus been demonstrated, on the balance of probabilities, that the proposed erection of a 3m deep rear extension would have been permitted by the GPDO on 17 April 2021.
16. I note the concerns expressed by interested parties over the proposed materials. The appellant's statement refers to the use of glass and the Council's officer report confirms its position that the materials proposed would be similar to those used in the existing dwelling. Whilst the plans do not confirm the materials proposed, development permitted by Class A is subject to the conditions in paragraph A.3, which include that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse³.
17. The Council's officer report also appears to take issue with condition A.3.(c), however, for the reasons explained above, the proposal does not have more than a single storey. That condition is not therefore applicable.

Other Matters

18. Reference is made by the parties to a LDC granted at Balliol Road but I have been provided with limited details of that proposal. In any case I am only able to consider whether what is before me is lawful.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

³ A.3.(a)

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 April 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed 3m deep rear extension, shown in plans LP 100, SP 100, EX PSE 100 Rev B and PD PSE 100 Rev B, would have been granted planning permission by Article 3 and Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Richard S Jones

Inspector

Date: [18 January 2022]

Reference: APP/K5600/X/21/3277716

First Schedule

The erection of a 3m deep rear extension

Second Schedule

Land at 49 Wallingford Avenue, London, W10 6PZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [18 January 2022]

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Scale: Not to Scale



