
Appeal Decisions

Site visit made on 14 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal A Ref: APP/T5150/W/21/3266678
133B Chatsworth Road, London NW2 5QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Wendy Deacon against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2469, dated 10 August 2020, was refused by notice dated 8 October 2020.
 - The development proposed is single storey rear extension.
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Appeal B Ref: APP/T5150/W/20/3260885
133B Chatsworth Road, London NW2 5QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Wendy Deacon against the Council of the London Borough of Brent.
The application Ref 20/1749 is dated 15 June 2020.
 - The development proposed is single storey rear extension.
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Appeal C Ref: APP/T5150/W/20/3260886
133B Chatsworth Road, London NW2 5QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Wendy Deacon against the Council of the London Borough of Brent.
 - The application Ref 20/1750, is dated 15 June 2020.
 - The development proposed is single storey rear extension.
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Appeal D Ref: APP/T5150/X/20/3260882
133B Chatsworth Road, London NW2 5QT

- 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 Mrs Wendy Deacon against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/1751, dated 15 June 2020, was refused by notice dated 14 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 construction of enlarged dormer to existing roof.
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Decision

1. Appeal B: The appeal is allowed and planning permission is granted for single storey rear extension at 133B Chatsworth Road, London NW2 5QT in accordance with the terms of the application, Ref 20/1749, dated 15 June 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved plans listed below

133NW25QT_BP3.0; 133NW25QT_SP3.0; 133NW25QT_DR3.1A; 133NW25QT_DR3.1B; 133NW25QT_DR3.1C; 133NW25QT_DR3.1D; and 133NW25QT_DR3.1E.
 - 3) The materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing building.
 - 4) No access shall be provided to the roof of the extension by way of window, door or stairway and the roof of the extension hereby approved shall not be used as a balcony, terrace or sitting out area.
2. Appeal D: 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.
3. Appeals A and C: The appeals are dismissed.

Application for costs

4. An application for costs was made by Mrs Wendy Deacon against Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary Matters

5. The Council's decision, in Appeal A, referred to policies from the Development Management Plan 2016 ('DMP'). The Council has since adopted the Brent Local Plan 2019-2041 ('LP') in February 2022, which superseded the DMP. Consequently, the Council identified the policies from the LP that it sought to rely on. The Appellant was then asked for her comments on these. The Council also referred to policies from the London Plan 2021 that it relied on. Where relevant, my decisions are made using these revised policies.

Reasons

Appeals A, B and C

6. As the developments that form the subjects of these appeals are similar, they can be dealt with together. Where necessary, a particular case will be referred to specifically. Each decision is, however, made individually.
7. All three appeals concern proposals for a single storey extension to 133B Chatsworth Road ('No 133B'). Appeal A was validated by the Council, and a decision to refuse planning permission was made on this. The applications

that are the subject of Appeals B and C were not validated; therefore, no decision was made on them, and these appeals are made against the Council's failure to reach a decision within the statutory period.

8. The reason that the Council did not register the applications was primarily because they had been submitted on 'Householder' application forms and the Council was of the view that the property was a flat. Therefore, its position was that the applications should have been made on 'Full' application forms. Its position has since changed; it now acknowledges that No 133B is a house and the Householder forms were appropriate.
9. Appeals A and C relate to identical proposals, where the proposed extension would project some 4m rearwards from the existing dwelling. Appeal B differs inasmuch as it would project by 3m.
10. The Council has submitted a single statement addressing all four appeals. For Appeal A, this is based on the reason for refusal that it gave in its decision. No case has been submitted in respect of Appeals B and C, save for the acknowledgement that the property is a dwellinghouse. I have taken it as read that, as they are identical, the Council's case for Appeal A is germane to Appeal C. In the absence of a substantive case for Appeal B, I have assessed this against the terms of the development plan taking into account other material considerations.
11. The Main Issue in Appeals A, B and C is the effect of the proposed development on the character and appearance of the area, including its effect on the host dwelling.
12. Nos 133A and 133B Chatsworth Road were formed through the vertical sub-division of No 133, which was a semi-detached house. No 133B lies to the rear of No 133A facing the fairly large rear garden and accessed via a drive to side of the two dwellings. It has accommodation set over three floors, that at second floor level being served by a dormer window.
13. No 133B has been subject to alteration and extension. A dormer has been added to its rear facing roof slope and a single-storey extension projects from its rear elevation, partly wrapping around an original two storey outrigger.
14. All three appeals relate to the provision of a single storey extension attached to the existing single storey extension. The majority of the area on which they would be built is used as a patio. This area is flanked by a detached, pitch-roofed garage that is within the garden area of the original No 133, but is not in the Appellant's ownership, and a single-storey extension to the rear of 135 Chatsworth Road.
15. The Council's Residential Extensions and Alterations Supplementary Planning Document 2 ('SPD') was adopted after a public consultation process. Its terms are a material consideration that carry considerable weight in my deliberations. Although it is a guide rather than a proscriptive document, it sets out that development proposals should conform with its terms.
16. With regards to single storey extensions for semi-detached houses, the maximum depth normally permitted by the SPD is 3m from the rear wall of the house. There is a caveat to this, a 6m extension may be acceptable where that part of its length over 3m should be set in from the boundary. The reason for

this is to “protect neighbouring residential amenity”. A height limit of 3m along the boundary is proposed for similar reasons.

17. I saw that the adjoining property to the east had also been subject to alterations. Included amongst these is a large single storey extension that was built along the boundary with No 133B. This projects rearwards from the rear of its host dwelling by a considerable distance.
18. The depths of the extensions proposed in the appeals were not annotated on the drawings submitted with the applications. However, the Council states that, in Appeals A and C, the 4m extensions would have a cumulative depth from the rear of the house of 8m. As this has not been challenged by the Appellant, I take it to be the case. Therefore, the proposed 3m extension in Appeal B would give a cumulative figure of 7m. The extensions proposed in all of the appeals would exceed the guidance in the SPD. It was apparent to me that the extension to the rear of the neighbouring property that I have referred to must also exceed the guidance.
19. Extending No 133B beyond the rear wall of the neighbouring extension, as would be the case with the 4m extensions in Appeals A and C, would lead to the ‘leap-frogging’ effect that is referred to in the Officer’s report for the application that formed the subject of Appeal A. This would appear disproportionate and would be harmful to the character and appearance of the area and the host dwelling.
20. By way of contrast, the smaller scheme in Appeal B would be the same length as that of the neighbouring property, with their end walls being conterminous with one another. The height of its flat roof would be 3.25m, rising to 3.52 along its parapet wall. From the plans, and what I saw on-site, these would be similar to the heights of the adjacent extension. A lantern would also stand proud of the roof towards the centre of the proposed extension.
21. To a degree, the extension in Appeal B would be at odds with the terms of the SPD. However, the explanatory reasoning behind the guidance for the length of extensions, including the need to set them in after 3m, and the limits to their height are based on the effects on the occupants of neighbouring properties. Given the presence of the extension to the neighbouring property and the distance to the neighbour on the other side, there would be no ill-effects on the living conditions of those properties’ occupants, a point accepted by the Council.
22. Overall, the terms of the SPD are that extensions should respect the character and appearance of the area, whilst protecting the living conditions of the occupants of neighbouring properties. These are reflected in the terms of LP Policies DMP1 and BD1. Amongst its terms, Policy DC3 of the London Plan requires development proposals to deliver buildings that respond positively to their settings, so is relevant. These policies accord with the Government’s policy guidance in its National Planning Policy Framework. For the reasons given above, I find that the smaller extension proposed in Appeal B would accord with the terms of the development plan policies and SPD I refer to, but the larger extensions proposed in Appeals A and C would not.
23. The Council also referred to London Plan Policy HC1. However, as this relates to heritage issues, it is not relevant to the appeals.

Conditions

24. The Council suggested four conditions be attached in the event that Appeal B was allowed, including the statutory time period. The drawings condition is required in the interests of good planning. The list of drawing numbers is that given by the Appellant in his initial submissions, which was not countered by the Council. The condition relating to materials is necessary to protect the character and appearance of the host dwelling and wider area. That relating to the use of the roof is necessary to protect neighbours' privacy. The Council's conditions were submitted at the Questionnaire stage and would have been seen by the Appellant, though she made no comment on them. I have assessed them against the tests in the Government's Planning Practice Guidance and find that they meet those tests.

Conclusions on Appeals A, B and C

25. For the reasons given I conclude that Appeal B should succeed, subject to conditions.
26. For the reasons given, I find that the extensions proposed in Appeals A and C would be harmful to the character and appearance of the host dwelling and the wider area, by reason of their excessive length. The development proposed in Appeals A and C would be contrary to the terms of LP Policies DMP1 and BD1 and the guidance in the SPD. Therefore, these appeals are dismissed.

Appeal D

27. The appeal relates to an application for a certificate of lawfulness for the enlargement of an existing dormer window. The Council's reason for refusing the application was that the property was a maisonette, rather than a dwellinghouse, and therefore did not benefit from permitted development rights. Therefore, in the opinion of the Council, a planning application for the development would be required.
28. In its submissions, it has subsequently acknowledged that this position was fundamentally wrong. It agrees that No 133B is a dwellinghouse and does, therefore, benefit from permitted development rights and that an application for planning permission would not be required.
29. Notwithstanding this position, as the appeal has been lodged, it is for me to assess whether the Council's decision to refuse to issue a certificate was well-founded, based on the situation at the time that the application was made to the Council. Permitted development rights for the extension of the dormer window are set out in Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the 'GPDO'). Paragraph B.1. provides a list of those situations where those works would not be permitted development and planning permission would be required. This is subject to a list of conditions in paragraph B.2. Conversely, should what is proposed accord with the terms of Class B, the proposal would be permitted development and planning permission would not be required.
30. From the information before me, including the written submissions and proposed drawings, as it accords with the terms of Class B, the proposed enlargement of the dormer window would be permitted development.

Conclusion on Appeal D

31. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of enlarged dormer to existing roof was not well-founded and that Appeal D should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Roy Curnow

Inspector

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 15 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The enlargement of the dormer would be permitted development by reason of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

Roy Curnow
Inspector

Date 30 May 2022

Reference: APP/T5150/X/20/3260882

First Schedule

Construction of enlarged dormer to existing roof

Second Schedule

Land at 133B Chatsworth Road, London NW2 5QT

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 use /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, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 30 May 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land at: 133B Chatsworth Road, London NW2 5QT

Reference: APP/T5150/X/20/3260882

Scale: Not to scale

