



Appeal Decision

Site visit made on 9 June 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/X4725/X/22/3294828

26 Eden Avenue, Wakefield WF2 9DJ

- 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 Richard Caines against the decision of Wakefield Metropolitan District Council.
 - The application ref 21/02008/CPL, dated 4 August 2021, was refused by notice dated 13 January 2022.
 - 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 a single storey 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.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether, on the balance of probability, the existing rear ground floor wall of the house is 'original' for the purpose of applying *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the GPDO).

Reasons

3. The appeal property is a semi-detached house which, the appellant advises, was built in the 1930s. Its appearance is consistent with a property of that era and I have no reason to doubt the appellant's claim. At the rear it has a single storey projecting ground floor element.
4. The burden of proof in an LDC appeal falls on the appellant and the standard of proof is the balance of probability. The appellant's case is that the extension is development permitted by Class A of Part 1 of Schedule 2 to the GPDO.
5. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. This is subject to various limitations and conditions set out at paragraphs A.1-A.4. It is common ground that the proposed extension would comply with most of these. The dispute centres on whether it complies with A.1(f)(i), which does not permit a single storey extension if it would extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a semi-detached house. Failure on this point would also lead to non-compliance with A.1 (ja).

6. There is no doubt about the depth of the addition proposed, which would project rearward of the existing property by 3m (measured along the ground). The issue is whether the whole of the existing ground floor rear wall is the rear wall of the original dwellinghouse or whether, as the Council contends, it is partly a later addition. In this case, in accordance with Article 2 of the GPDO, 'original' means as existing on 1 July 1948. Accordingly, my decision hinges on whether the existing single storey rear projection was, on the balance of probability, built before or after 1 July 1948.
7. It appears that these houses were originally built with a single storey projecting element at the rear. However, these did not occupy the full width of the property. It is the appellant's case that the appeal property was modified during or soon after its construction (well before 1948) to extend the ground floor element across the full width of the building. It remained a flat-roofed structure at that point, a pitched roof being added later. Thus, the ground-floor structure and, crucially, its rear wall, is said to be 'original' for the purposes of the GPDO.
8. It is evident from the brickwork in the side elevation that the full-width addition was in place before the current pitched roof was added. I do not know when the roof was added but it is obvious from the weathering of the tiles that it was some time ago. A photograph of the roofing work being carried out is not dated but is clearly not recent. Furthermore, the appellant has provided plans submitted to the Council in 1976 in relation to a proposal for a garage at the property. This indicates a full-width rear element at that point in time, in contrast to the narrower rear element at the neighbouring property. This is persuasive evidence that the full-width ground floor element was in place by that time.
9. The position prior to 1976 is less clear. The appellant advises that his understanding regarding the age of the ground floor element was informed by talking to his neighbours. There is not any documentary evidence to support the specifics of this claim. Nevertheless, it is consistent with the appearance of the structure. In particular, black ash mortar has been used in the rear ground floor element and is visible at either end of the structure. It is also visible in other parts of the appellant's house. This building material was used extensively in the 1930s but subsequently fell out of favour. Consequently, its use here supports the claim that the full-width ground floor element was created at the time the house was built or soon afterwards.
10. The Council's case rests solely on a plan accompanying the deeds to a neighbouring house, which shows a narrower rear projection at No 26. I understand that this plan, which is not dated, was provided in 1985.
11. However, I attach little weight to that plan; I do not know when the mapping was carried out and even an old map base might adequately serve the purpose of outlining a plot of land to attach to the deeds of a property. The difficulty of relying on such plans is illustrated by a plan the appellant obtained from the Land Registry in 2016, which also showed the narrower rear projection. Quite plainly, the full width addition was in place long before then. I attach greater weight to the appellant's plan from 1976, which was specifically prepared for a building project, and seems to have been prepared with sufficient care to distinguish between the wider addition at the appeal property and the narrower version at the neighbouring house.

12. There are variations in the brickwork and pointing of the rear elevation which suggest that it has been subject to various works over the years, but that is perhaps to be expected in a building of this age. Viewed as a whole, I consider that the structure now in place formed the rear elevation of the property on 1 July 1948. The proposed extension would not project more than 3m rearward of it. Consequently, the limitations imposed by A.1(f) and A.1(ja) would be met.
13. I have noted the concerns raised regarding the effect of the development on a neighbouring property, but such planning considerations are not relevant to the determination of an application for an LDC under section 192 of the Act.

Conclusion

14. 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 a single storey rear extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and issue the certificate the appellant seeks.

Peter Willows

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 4 August 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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:

On the balance of probability, the existing ground floor rear wall of the property was in place by 1 July 1948 and can be regarded as part of the 'original dwellinghouse'. As a consequence, the proposed extension would not exceed any of the dimensions specified within Class A of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) and was consistent with the provisions of that class on the date of the application.

Signed

Peter Willows

Inspector

Date: 27 June 2022

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First Schedule

Single storey rear extension, as shown in Drawings MRC001/001; MRC001/002; MRC001/003 and MRC001/004.

Second Schedule

Land at 26 Eden Avenue, Wakefield WF2 9DJ

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, 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 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: 27 June 2022

by **Peter Willows BA MRTPI**

Land at: 26 Eden Avenue, Wakefield WF2 9DJ

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Scale: Not to Scale

