



Appeal Decision

No Site Visit

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/L5810/X/21/3285999

Land at 47 Fielding Avenue, Twickenham TW2 5LZ

- 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 & Mrs Spooner against the decision of Richmond Upon Thames London Borough Council.
 - The application ref DC/LCA/21/2542/PS192, dated 5 July 2021, was refused by notice dated 8 October 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 in the application form as: (i) A 2.75m high single storey rear extension projecting 3m; (ii) a two storey rear extension sited more than 2m from side boundary and 7m from rear boundary; (iii) a hip to gable extension with dormer extension (providing less than 50m³ additional volume); and (iv) rooflights and windows projecting less than 150mm from the roof slope.
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Preliminary Matters

1. Having considered the evidence submitted, the main considerations in this case and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal.
2. I note that a series of amended plans have been submitted by the appellants with their appeal. It would appear that these have been submitted in an attempt to overcome the reasons for the refusal of the LDC application. The Council has not, however, agreed to a modification of the plans it considered on the LDC application. Accordingly, my decision has been made with regard to the plans submitted with the LDC application. To consider the amended scheme would cause injustice to the Council as their case has been made in this appeal having regard only to the original scheme.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision

to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellants to show that the development referred to in the application would be lawful if begun on the date the application was made.

4. It is the appellants' case that the proposed development would be permitted by Class A and Class B, of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), hereafter referred to as Class A and Class B. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, while Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Criteria (a) to (l) of A.1. specify the type of development that would not be permitted by Class A. The criteria listed in B.1. do the same for Class B. The Council's delegated report considers each of these criteria in turn, and suggests after each whether or not the development would be compliant with it. The LDC decision notice refers to criteria (h), (i) and (ja) of A.1. and (b) of B.1., and states that the proposal would fail to comply with these. I have, therefore, considered each of these criteria in this decision.
5. Although a minor point, it is worth noting the approach the Council has taken in this case, which is to say where it considers the proposed development to be that specified by a particular criterion of A.1. or B.1., it suggests that the development does not comply with that criterion. Conversely, I would regard compliance with a particular criterion of A.1. to mean that the proposed development is that specified by that criterion and, therefore, not permitted by Class A. I have used this approach in my decision when considering the criteria of A.1. and B.1. that have been listed in the decision notice.
6. In reaching my decision in this case I have had regard to the MHCLG Technical Guidance on permitted development rights for householders. This includes advice on how to consider the criteria of the Order relevant in this case.

Reasons

Enlargement to the Rear

7. The plans show that there is an existing single storey addition to the rear of the dwellinghouse, adjacent to the boundary with 45 Feilding Avenue. The evidence suggests that this addition is not part of the original dwellinghouse. The LDC application proposes a new addition to the rear of the dwellinghouse, which I note would more than envelope the existing extension. In their appeal statement the appellants have confirmed that the proposed rear addition would replace the existing extension, rather than be added to it. This is consistent with the submitted plans, which suggest that what is proposed would not include the vast majority, if not, any part of the existing extension. Indeed, it is difficult to see how the vast majority of the existing extension could be retained if the development proposed were constructed. Notwithstanding this, the development described in the LDC application does not include the demolition of the existing extension.
8. In view of the above, I have considered the proposed enlargement to the rear of the dwellinghouse as entirely new development in the place of the existing extension, rather than a new enlargement joined to an existing enlargement. I have not, however, determined whether or not the demolition of the existing extension would be permitted by the Order as this does not form part of the development described in the LDC application before me.

9. Also relevant to my consideration of some of the criteria of A.1. is how I consider the proposed enlargement to the rear, described separately in the LDC application as a single storey rear extension and two storey rear extension. The appellants have approached their case by treating these as two separate elements of proposed development; suggesting that, for example, the limitations imposed by A.1.(h) would only apply to the element they describe as a two storey rear extension, and not to the element referred to as a single storey rear extension.
10. Having considered the plans submitted, it is clear that these two elements comprise a single and discreet development, forming a proposed single enlargement of the dwellinghouse. The single storey element would not be severable from the two storey element, and vice versa. As proposed on the plans, one part of the enlargement could not be constructed without the other.
11. This approach to considering the two joined elements as a single enlargement is consistent with the advice given in the MHCLG Technical Guidance. In particular, its advice on new extensions joined to existing extensions (page 21), where it advises that the limitations imposed by A.1. would apply to both the proposed and existing enlargement. Whilst I have clarified above that I have considered the proposed enlargement to the rear as an entirely new development, my reading of the approach advocated in the MHCLG Technical Guidance would be to regard both the single storey and two storey elements (i.e. both (i) and (ii) in the description of the development) as a single enlargement to the dwellinghouse, such that the limitations imposed by A.1. would apply to it as a whole.

- Criterion A.1.(h)

12. Criterion A.1.(h) relates to enlargements that would have more than a single storey. As I have concluded that both the single storey and two storey elements would be part of a single enlargement, I am satisfied that the limitations imposed by criterion A.1.(h) apply to the whole of the proposed enlargement to the rear of the dwellinghouse. This criterion imposes two limitations to the development permitted by Class A. I deal with each of these in turn as follows.
13. In applying criterion A.1.(h)(i), the enlargement proposed would not be permitted if it would extend beyond the rear wall of the original dwellinghouse by more than 3 metres. I can see that the side elevation plan (drawing number 292 PR.06) suggests that the rear enlargement would extend only 3 metres from the rear wall of the dwellinghouse, although I acknowledge the Council's suggestion that this plan shows a marginal extension of the roof of the proposed enlargement beyond 3 metres.
14. Notwithstanding this, I note that the existing plans show that the original dwellinghouse comprises a stepped rear elevation and that the enlargement would extend beyond both walls of this original stepped rear elevation. The 3 metres referenced on the annotated plan is measured from the wall of the rear elevation furthest into the plot where the enlargement would have the shallowest depth. The depth of the enlargement (both the single and part of the two storey element) would exceed 3 metres when measured at its deepest, from the recessed wall within the rear elevation. Accordingly, the enlargement would be that referred to in A.1.(h)(i) and would not, therefore, be permitted by Class A.

15. Turning to A.1.(h)(ii), this refers to the boundary of the curtilage of the dwellinghouse being enlarged that is opposite the rear wall of that dwellinghouse. There is no dispute that the boundary of the curtilage of 47 Fielding Avenue corresponds to the boundary of the appeal site. The shape of the appeal site is such that the width of the garden narrows towards the rear of the plot. The rear boundary is, therefore, at an angle to the rear wall of the dwellinghouse on the site. Despite this, there is no suggestion that this rear boundary is not the boundary opposite the rear wall of the dwellinghouse. Indeed, an illustrative example is provided on page 21 of the MHCLG Technical Guidance, under criterion A.1.(h), which shows a rear boundary at an angle similar to that at the appeal site.
16. Having regard to this Guidance, I note the appellants' suggestion, that the tallest part of the enlargement (i.e. the part that comprises an upper floor) would not be within 7 metres of this rear boundary. Whilst this may be the case, the Council suggest that the part of the enlargement closest to the boundary of the appeal site with No 45 would be within 7 metres of the rear boundary. This is not disputed by the appellants. Despite this part of the proposed enlargement being of a lower height, it would still form part of the single proposed enlargement in this case. For this reason the enlargement when considered as a whole would be within 7 metres of the boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse. As such, I find that the development would be that referred to in A.1.(h)(ii) and would not, therefore, be permitted by Class A.

- Criterion A.1.(i)

17. Criterion A.1.(i) states that development is not permitted by class A if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.
18. The proposed enlargement would comprise a flat roof above both the two storey element and the single storey element. The eaves height of the flat roof above the two storey element would exceed 3 metres when measured in accordance with the MHCLG Technical Guidance. That this part of the enlargement would not be located within 2 metres of the site boundary is of no relevance in this case. For the reason already given, this two storey element is not to be considered in isolation, but as part of a single enlargement that adjoins the boundary of the appeal site. Indeed, the MHCLG Technical Guidance advises that the maximum height of the eaves that is allowed for the proposal in these circumstances is 3 metres. It does not add that the 3 metre limit applies only to the part of an enlargement that falls within 2 metres of the boundary.
19. In view of the above, the development would be that referred to in A.1.(i) and would not, therefore, be permitted by Class A.

- Criterion A.1.(ja)

20. Under criterion A.1.(ja), development is not permitted by Class A if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j) of A.1.. I have set out earlier in this decision that I have regarded the proposed enlargement to the

rear of the dwellinghouse as an entirely new enlargement, rather than it being an enlargement that would be added to the existing single storey extension. For this reason I conclude that the development would not be that described in criterion A.1.(ja). This does not, however, alter my conclusions with regard to criteria A.1.(h) and (i).

Works to the roof

- Hip to gable and dormer extension

21. Having considered this element of the proposed scheme under Class B, it is the Council's case that the scheme would include development specified in criterion B.1.(b), which states that development would not be permitted by Class B if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. The Council suggest that the scheme proposes an increase in the ridge height of the dwellinghouse.
22. I can see no discernible difference in the ridge height of the dwellinghouse when comparing the existing elevation plans with the proposed elevation plans. Indeed, the Council do not suggest that there is a difference between the two sets of plans. I note that the ridge of the adjoining dwellinghouse at No 45 has been drawn on the existing front and rear elevation plans at a lower height to that of the appeal property, and that it is drawn the same on the proposed plans. It is this that the Council point to in suggesting that the scheme proposes an increase in the ridge height; it says that at present the ridge height of both properties is the same.
23. The appellants suggests that the ridge height of No 45 has been drawn incorrectly on the submitted plans, and has confirmed that the scheme does not include an increase in the ridge height of the dwellinghouse.
24. Whilst I note the Council's case on this matter, I do not have sufficient evidence before me to demonstrate that the ridge height of the dwellinghouse is currently less than that shown on either the existing or proposed elevation plans. Instead, I have before me a scheme that does not include, neither in its description nor in the accompanying plans, a proposal for an increase in the ridge height of the roof of the dwellinghouse. Accordingly, this leads me to conclude that the development would not comply with criterion B.1.(b) and would, therefore, be permitted by Class B.
25. Notwithstanding the above, should development be carried out to the dwellinghouse that is materially different to that described in the LDC application, including any increase to the ridge height of the dwellinghouse, it would not have the benefit of any certificate granted in this case.

- Roof lights

26. Three roof lights are proposed in the front roof slope of the dwellinghouse, one of which would be mostly within a new section of the front roof slope. I note that the Council has considered the proposed roof lights under Class C of Part 1, Article 3, Schedule 2 of the Order (hereafter referred to as Class C), which permits any other alteration to the roof of a dwellinghouse. It has concluded that the development would not fall within any of the criteria listed in C.1., which are the types of development not permitted by Class C. I have no reason to reach a different conclusion to this.

Summary

27. Whilst I have concluded that the proposed enlargement to the rear of the dwellinghouse would not be permitted by Class A, I have found that Class B and Class C would permit the other works listed in the LDC application (i.e. both (iii) and (iv) in the description of the development).
28. Having regard to the plans submitted, it is clear that the proposed enlargement to the rear and side of the roof of the dwellinghouse and the addition of three roof lights in the front roof slope would be elements of the proposed scheme that are entirely separate to the enlargement proposed to the rear. Indeed, I have no reason to conclude that the proposed works to the roof could not be carried out without the enlargement to the rear. For this reason I have concluded that a LDC ought to be granted for part of the development that is subject of the LDC application in the terms set out below.

Conclusion

29. 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 development described as a hip to gable extension with dormer extension (providing less than 50m³ additional volume) and rooflights and windows projecting less than 150mm from the roof slope was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended in respect of these matters.
30. Otherwise, for the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the development described as a 2.75m high single storey rear extension projecting 3m, and a two storey rear extension sited more than 2m from side boundary and 7m from rear boundary was well-founded and that the appeal should fail insofar as it relates to these matters. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended in respect of these matters.

Decision

31. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operation which is found to be lawful.
32. Otherwise, the appeal is dismissed.

J Moss

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 5 July 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in 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:

The works specified in first schedule hereto would have been permitted by Class B and Class C of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

J Moss

INSPECTOR

Date: 19 July 2022

Reference: APP/L5810/X/21/3285999

First Schedule

Erection of a hip to gable extension with dormer extension (providing less than 50m³ additional volume), and rooflights and windows projecting less than 150mm from the roof slope.

Second Schedule

Land at 47 Fielding Avenue, Twickenham TW2 5LZ.

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: 19 July 2022

by J Moss BSc (Hons) DipTP MRTPI

Land at: 47 Fielding Avenue, Twickenham TW2 5LZ

Appeal ref: APP/L5810/X/21/3285999

Scale: Not to scale

