



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal Ref: APP/C5690/X/21/3288369

47 Veda Road, Ladywell, London SE13 7JQ

- 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 Veda Road Ltd against the decision of the Council of the London Borough of Lewisham (the LPA).
 - The application Ref DC/21/124142, dated 2 November 2021, was refused by notice dated 25 November 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 construction of an outbuilding in the rear garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. The planning merits of the proposed development are not relevant in an appeal against a refusal of an LDC application.
3. The main issue is whether the LPA's decision to refuse the LDC application was well-founded. In this case, particular regard is to be had as to whether the proposed development would be granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

4. Article 3(1) of the GPDO grants planning permission for development which falls within the classes defined as 'permitted development' under Schedule 2. Class E of Part 1 of Schedule 2 sets out that the provision within the curtilage of a dwellinghouse of a building for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development.
5. The proposal comprises the erection of an outbuilding in the rear garden of the property. The roof plan shows the building would be 'L' shaped to the rear. The appellant states that this has been done to reduce the floor area of the building by 5.16m² and ensure the building falls below the 50% of the total curtilage threshold set out in paragraph E.1(b) of Class E. However, the proposed floor plan shows a wall which would connect with the side wall of the building and the rear wall of that part of the building which would contain the office.

6. The appellant's evidence suggest this would be a brick wall with no roof covering and would be finished in hard surfacing. However, the rear elevation detail shows a single rear wall extending across the full 7.15m width. Whilst that part of the rear wall where the 'L' shape is proposed would not extend up to the full height of the building as the folding doors in the outbuilding are partially exposed, the rear elevation detail nevertheless points towards a single building operation. Moreover, the side elevation detail shows no delineation for the 'L' shape to the rear as it does with the 'L' shape to the front of the building. Rather it shows a single wall extending from the bi-folding doors at the front of the building to the rear wall on the boundary line. As a result, on the evidence before me, it seems to me on the balance of probabilities that the building will cover the 5.16m² of ground which the appellant indicates would comprise a "set in".
7. As a consequence, the total area of ground covered by the building would be 59.76m² and not the 54.60m² stated by the appellant. Both parties agree that there have been previous additions beyond the original dwellinghouse which cover 6.73m² of the curtilage. As a result, the proposal would result in the total area of ground being covered by buildings within the curtilage, other than the original dwellinghouse, being 66.49m². That would be more than 50% of the total area of the curtilage which the appellant states is 125.84m². Therefore, the development would fail to meet the limitation set out under paragraph E.1(b) of Class E of the GPDO.
8. The LPA also states that the development would result in a raised platform of 0.72m in height and thus fail to meet the limitation in paragraph E.1(h) of Class E. However, since I have found the development would fail to meet the limitation in paragraph E.1(b), there is no reason for me to come to a conclusion on this point.
9. I conclude that the appellant's evidence is somewhat imprecise and ambiguous and thus, on the evidence before me, the development would not be granted planning permission by Article 3(1) of the GPDO. Consequently, at the date the LDC application was made, the development would not have been lawful.

Conclusion

10. 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 construction of an outbuilding in the rear garden 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.

J Whitfield

INSPECTOR