



Appeal Decision

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Appeal Ref: APP/Q5300/X/21/3275236

11 Valley Fields Crescent, Enfield, EN2 7QB

- 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 Ms Sofia Nicholas against the decision of the Council of the London Borough of Enfield.
 - The application ref 21/00394/CEA, dated 9 March 2021, was refused by notice dated 4 May 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 a single storey rear extension together with internal alterations and replacing front double door with single door and window. Conversion of existing garage into outbuilding (ancillary to main house), removal of garage door and insertion of single door and window.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I consider that this appeal can be determined without the need for a physical site visit given the written submissions and nature of the appeal. Neither the Council nor the appellant have raised objections to the appeal proceeding on this basis.

Reasons

3. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether, at the time of the application, the proposed works would have constituted permitted development (PD) and therefore granted planning permission by Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The planning merits of the proposal are not relevant.
4. Article 3 and Schedule 2, Part 1, Class A grants permission for the enlargement, improvement or other alteration of a dwellinghouse. The Council says that the proposal does not meet limitation (f) (ii) as it alleges that the height of the proposed extension would be greater than 4m. The appellant says that the Council should have referred to limitation (g) (ii). However, the limitation under (g) (ii) is the same as (f) (ii) so this matter makes no difference to the determination of the appeal.
5. Nevertheless, it is not only the 4m limitation that needs to be considered. Limitation (i) says that development is not permitted 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.” Therefore, the relevant height limitation in the case of this flat-roofed extension would be 3m rather than 4m.

6. The proposed extension would be built on ground that is not level. Article 2(2) of the GPDO says “... any reference in this Order to the height of a building... is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building ... or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.” The Technical Guidance¹ says something very similar but as the Order is the legislation, I have focussed on the wording of the Order.
7. Since the building referred to in Class A is the enlarged part of the dwellinghouse, i.e., an extension, I consider that the relevant building referred to under Article 2(2) is the proposed extension. Therefore, my interpretation of the height limit is that the ground level should be taken from the highest part of the surface of the ground adjacent to the extension. It is not, therefore, to be taken from the highest part of the surface of the ground adjacent to any other part of the dwellinghouse.
8. When measured from the highest part of the ground adjacent to the proposed extension at the back of the house, the extension would be in excess of 3m in height. Therefore, it would not be permitted development.
9. In addition, it also says in A.1 (d) that development is not permitted if “the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.” The eaves of the extension are shown as being higher than the existing eaves at the point where the new external walls would meet.

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 a single storey rear extension together with internal alterations and replacing front double door with single door and window. Conversion of existing garage into outbuilding (ancillary to main house), removal of garage door and insertion of single door and window” 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.

Ms Watson

INSPECTOR

¹ Permitted Development Rights for Householders, Technical Guidance, September 2012, MHCLG