
Appeal Decision

Site visit made on 29 March 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/N5090/X/22/3305880 21 The Ridgeway, London N3 2PG

- 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 Dr Stuart Wolfman against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/2618/192, dated 16 May 2022, was refused by notice dated 11 July 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
- The development for which a certificate of lawful use or development is sought is a single storey rear extension 3no. rooflights following demolition of the existing rear extension. Conversion of the existing garage into habitable room, insertion of window and door to replace garage door.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. The Council has purported to grant a certificate of lawful use or development, albeit one opining that the proposed development is 'unlawful'. Where the authority is not satisfied as to the lawfulness of what is proposed, the appropriate course of action, as set out in the relevant legislation, is to refuse the application, and not to issue a certificate of any kind. Nonetheless I shall treat the Council's notice as a refusal of the application, as that appears to have been its substantive intention, if not its effect.

Main Issue

2. The main issue in the case is whether the Council's purported refusal to issue a certificate of lawful development was well-founded. The point at issue between the parties concerns whether the proposed works to construct a rear extension would have the substantive effect of joining the house to a pre-existing detached garage (itself to be the subject of conversion works). If so then the overall effect would be to exceed the relevant permitted tolerances found in the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'), meaning that express permission would be required.

Reasons

3. The Council have confirmed that there are no planning conditions or Directions withdrawing the application of permitted development rights, and thus the questions arising concern the application of the provisions of the 2015 Order.

4. The onus of proof in such cases rests on the appellant, to the standard of probability. Although the appellant's statement identifies the principal issue as "whether, due to the design and scale of the single storey 3m rear extension would be out of keeping and not harmonised with the existing dwelling and would not be detrimental to the visual amenities of the area and in conflict with the policies", this is not the main (or a relevant) issue in the case.
5. The appeal concerns an application for a certificate of lawful development. Development requiring planning permission, as defined by Part 3 of the 1990 Act, is proposed. My task on the appeal is to ascertain whether the proposed development benefits from the permission already granted by the development Order made under section 59 et seq of the 1990 Act, namely the 2015 Order. Determining this question does not involve any consideration of planning policies or the merits of the development and I make no finding about whether, if express permission is required, it should be granted. It is instead a straightforward question about whether the proposed development complies with the terms and restrictions of the 2015 Order.
6. The appellant draws my attention to similar developments in the vicinity, some of which appear to have followed the issuing of lawful development certificates, and particularly to the house next door, attached to the appeal property. The relevant provisions of the relevant development Order applicable at the time of other determinations as to lawfulness have not been put before me. In any event I could not be bound by the Council's (or another Inspector's) interpretation of the relevant Order in the circumstances of another case, but I need to reach my own judgment based on the facts and the development Order before me.
7. Plans are submitted showing an existing layout of the semi-detached house, which is attached to its neighbour to the right/south when viewed from The Ridgeway. To the north of the house lies a car-width gap (a driveway) between the house and the property boundary. Beyond the house to the east lies a single-storey detached garage building. This building lies against the northern property boundary, and its width is such that it protrudes southwards to be slightly behind the existing eastern rear wall of the house; that is, it takes up the width of the driveway and a little more.
8. An existing rear extension from the living room of the house is due to be demolished, and replaced with a wider (and slightly deeper) single-storey rear extension reaching across much of the width of the house. To accommodate the existing garage building, which is to be retained and converted into a utility room, the side of the rear extension would fall short of the northern wall of the house. The northern side wall of the proposed extension is proposed to adjoin the southern garage wall leaving a gap between the two, described as being of some 200mm.
9. The plans supplied are somewhat unsatisfactory in that the heights, and relative heights, of the garage and the extension are inconsistently shown. Drawing number 6/11 shows the eaves of the rear extension to sit below the height of the garage; drawing 8/11 shows them to be around the same height as the garage's parapet wall. The gap between the structures is said to be 200mm but on the plans (4/11 and 11/11) it appears smaller than this, at around 50mm. No overhang of the undercloak or roof tiles is shown to the northern gable of the proposed rear extension, which would be unusual,

although this in itself is not a consideration when deciding whether permitted development rights apply to what is proposed. Nonetheless it is not clear how, if at all, the roofs of each element would link in or relate to each other. No plans of the proposed foundations or drainage arrangements are supplied, and the existing guttering to the garage is not depicted on the plans. The efficacy of the proposed construction is not explained.

10. There is not presently proposed to be any internal integration between the utility room and the rear extension. It would not still be possible for a person to pass from the house's front garden to the rear without passing through the utility room, or through the house. Access from the utility room to the house would be either to the existing western front door or to its proposed eastern rear bi-fold doors. The Council have suggested that a separation distance of a minimum 500mm would be needed to achieve a material degree of separation between the two buildings; with the present proposal the Council say that the result would be interpreted as a combined structure (thus falling foul of the 2015 Order's requirement that any extension should not project beyond a side wall of the dwellinghouse).
11. I do not need to opine on what hypothetical separation distance, if any, is required in order for the garage/utility building to amount to a separate building, but only to address the matters before me. I find that the plans before me are insufficiently accurate or detailed to allow me to reach, on the balance of probability, a conclusion that the structures would indeed be separate.
12. The appellant seeks a development to match that of the next door (attached) neighbour. Although a lawful development certificate appears to have been granted there for plans showing a minor separation between the buildings, it is clear that, if that was the case, the existing development does not accord with those plans: the garage building is now plainly integrated with the house extension. It is difficult to see how the proposed development here would both maintain a separation distance between the buildings and also match the neighbouring development.
13. Determinative, however, is that I cannot be confident that the plans accurately depict what is there or what is proposed. They are inconsistent as to the heights of the garage and rear extension roofs. The separation distance between the structures is described as being 200mm but is depicted as somewhat less. The existing guttering is not accounted for. Thus I am not able to determine precisely the eventual relationship between the proposed extension and the existing garage building.
14. Therefore I am unable to conclude, on the balance of probability, that the enlargement of the dwellinghouse would be limited to the provision of the rear extension and would not encompass the garage/utility building. The proposed conversion works to the garage/utility building itself, if proposed as a discrete element, would not appear to me to offend any of the relevant provisions of the Order, but it appears that the works are proposed as a whole and I am not asked to consider granting a certificate for part only of the proposed works.
15. I repeat that I am not considering the merits of what is proposed, because this is not an application for planning permission, and my findings here should not prejudice the outcome of any such application.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development, in respect of a single storey rear extension 3no. rooflights following demolition of the existing rear extension; conversion of the existing garage into habitable room, insertion of window and door to replace garage door, 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.

Formal Decision

17. The appeal is dismissed.

Laura Renaudon

INSPECTOR