The Planning Inspectorate

# Appeal Decision

Site visit made on 20 April 2023

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18th MAY 2023**

**Appeal Ref: APP/P1940/X/22/3300932**
**Land at Old Farm, Harthall Lane, Kings Langley WD4 8JW**

- 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 Shabaz Khaliq against the decision of Three Rivers District Council.
- The application ref 22/0404/CLPD, dated 4 March 2022, was refused by notice dated 1 June 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 ground floor extension to the north-west and north-east elevations.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The site visit was arranged as an accompanied visit, where a representative of both the Council and appellant should have been in attendance. The Council's representative did not, however, attend the site at the time and date specified. Accordingly, I carried out the site visit as an access only visit. In doing so I am satisfied that neither party would be prejudiced in any way.

3. On a separate matter, both the design and access statement submitted with the LDC application and the appeal statement refer to a first floor addition. This is not referred to in the LDC application form. Neither is it shown on the plans submitted with the LDC application. Such a proposal is not, therefore, before me and will not form part of my determination in this appeal.

## Main Issue

4. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 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 appellant to show that the development referred to in the LDC application would have been lawful if begun on the date the application was made.

5. Whilst the description of the development is of a ground floor extension, singular, the plans submitted with the LDC application show two single storey extensions, one being independent of the other. It is the appellant's case that both the proposed extensions would be permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order). Whether or not this is the case is the main consideration in this appeal.

## Reasons

*Extension to the North-East Elevation*

6. The appellant suggests that the north-east extension would be permitted by Class A of Part 1, Article 3, Schedule 2 of the 2015 Order, hereafter referred to as Class A. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. The criteria within A.1. of Class A specify the type of development that would not be permitted by Class A.

7. The Council suggest that the development would be that specified in criterion (e)(i), which says that development would not be permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse. What is in dispute between the parties is whether or not the north-east elevation is the principal elevation of the original dwellinghouse.

8. The dwellinghouse forms a semi-detached pair with the adjoining Flint Cottage. They do not, however, present a semi-detached arrangement that is usually found in a more suburban setting. They are arranged in a 'L' shape, resulting in an enclosed garden overlooked by both properties.

9. The appeal property is one arm of the 'L' shape and, therefore, has a linear form. The elevation facing the adjoining highway is the gable end of the building, which forms the boundary of the site with the highway. There is no dispute that neither this nor the north-west facing elevation is the principle elevation of the original dwellinghouse for the purposes of this appeal.

10. The MHCLG Technical Guidance on Permitted development rights for householders provides some assistance in this case. It defines what is meant by "Original" as well as what is meant by the "Principal elevation". The definitions are important as I must have regard to what is the **original** dwellinghouse when considering which elevation of it is the principal elevation.

11. With this guidance in mind, I note the extracts of plans of the building dating from 1951 that have been provided by the Council. Whilst I was not able to view inside the dwellinghouse at the site visit, its footprint appears to be broadly in accordance with the extract of the 1951 plans provided, save for the conservatory porch addition on the south-west elevation and the single storey addition to the north-west. Indeed, these extensions have the appearance of later additions. It is, therefore, more likely than not that the building as shown on the plan extracts is as it existed on 1 July 1948. Accordingly, these provide a degree of certainty in establishing what is the original dwellinghouse in this case.

12. These historic plans show an entrance to what is described in the LDC plans as a kitchen (without the conservatory porch, of course) and another to the dining room. Having viewed both entrances within the context of the south-west

facing elevation, I note that the dining room entrance is within a projecting gable. Whilst this projecting gable is a fairly prominent feature, it is not central in the elevation and provides access to a dining room, rather than an entrance hall or other central space within the dwelling.

13. Otherwise, I find the south-west elevation to be simple in terms of architectural features. All other window openings on this elevation are small when compared to others on the north-east facing elevation. There is also a catslide roof indicating that this side of the dwelling is predominantly single storey. Indeed, the first floor plans support this, suggesting that this side of the building is a subordinate part of it.

14. Even if I were to take account of the addition described as a conservatory porch, its size compares to that of a conservatory, rather than a porch. Its simple design gives it the appearance of a secondary addition, rather than a main architectural feature. This might be the means of access most often used by those arriving at the dwelling on foot. However, the conservatory porch provides access to a door in a side wall of this part of the dwelling, the appearance of which is of a rear access door, typical of that providing access to a kitchen. I am not, therefore, persuaded that the kitchen door is a main entrance, such that I would conclude that the conservatory porch serves the main entrance to the house.

15. Turning to the north-east elevation, I note from the layout plans that the vast majority of this side of the building is two storey. There is a doorway that sits centrally between two matching chimney stacks and two projecting gables, both of which feature a curved bay window at ground floor. These architectural features are more striking than those found elsewhere on the building. The composition of this aspect of the building gives it the appearance of a primary elevation. Accordingly, and having regard to the internal layout of the building, the doorway in this elevation is clearly intended to be the main entrance. This is regardless of whether or not it is used as such.

16. I have had regard to the appellant's representations that note the features of the garden area to the front of the south-west elevation, including the low front wall and garden gate, and its relationship to Flint Cottage. I acknowledge that this garden area is fairly open to the adjoining street. The appellant points to the letter box I saw on the conservatory porch door and suggests that all letter and parcel deliveries are via this side of the property. As for the garden area to the front of the north-east elevation, I note that this is more expansive; it contains features typical of a private rear garden; and is, on the whole, more private than the smaller garden on the opposite side of the building.

17. However, the land to the north-east of the dwelling also accommodates the only means of vehicular access to the site. The drive terminates at the main entrance described above. I note that on-street parking in the area is limited and there is no footway in the vicinity of the appeal site. Those arriving at the site by vehicle are, therefore, more likely than not to use the north-east entrance.

18. The unusual layout of the appeal site as a whole and the location of its more private garden areas reflect the historic use of the building and the wider site, and how ownership of land associated with the wider site has been divided. Both garden areas of the property include features that are typically found in a front garden serving the principal elevation of a dwellinghouse. Accordingly,

the layout and character of the land associated with the dwellinghouse provide little assistance in this case. I also note that the MHCLG guidance does not suggest that such matters be considered when determining what is the principal elevation of the dwellinghouse.

19. All things considered, I find as a matter of fact and degree that the north-east elevation of the original dwellinghouse is its principal elevation. As the proposed extension to the north-east elevation would extend beyond a wall which forms this elevation, the development would not have been permitted by Class A if instituted or begun on the date the LDC application was made.

20. Notwithstanding the above, the officer's report says that the extension would not comply with condition A.3(a) of Class A, which requires that the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

21. Neither the plans nor the written submissions specify the materials to be used in the construction of the extension. However, I note how the elevations of both the extension and the existing dwellinghouse have been drawn on the LDC plans; there is a difference between the two. This indicates that there would be a difference in the appearance of materials to be used in the exterior work of the extension. There is nothing in the appellant's submissions that indicates otherwise.

22. For these reasons, even if I had found that the extension would not have extended beyond a wall which forms a principal elevation of the original dwellinghouse, I would still conclude that it would not have been lawful. This is because it would have been carried out in breach of condition A.3(a) imposed on the planning permission granted by Class A.

Extension to the North-West Elevation

23. This element of the scheme proposes the demolition of the existing single storey addition and its replacement with a single storey addition. This would extend the dwelling by around half of its width and would match its depth. The development would, therefore, extend some distance into the land to the north-west of the dwelling.

24. There is no dispute that, when considered in isolation, the north-west extension would not exceed any of the limitations imposed by parts A.1 and A.2 of Class A, and I have no reason to find otherwise. However, the Council suggest that the extension would not be lawful, in view of the engineering works that would be necessary to construct it.

25. The Council has drawn my attention to case law[1] which relates to engineering works required for a basement extension. It was said in that case that there had to be a point where the excavation, underpinning and support for a basement became different in character from the enlargement, improvement and alteration of the dwelling. The case confirmed that it is for the decision-maker to decide whether there were two activities of substance or one as a matter of fact and degree. Whilst the development in that case is different in nature to that before me, the principles confirmed in that case are relevant.

[1] *Eatherley v Camden LBC & Ireland* [2016] EWHC 3108 (Admin); [2017] JPL 504

26. There is a patio area to the north-west of the dwelling that is fairly level with the dwelling's ground floor. There is, however, a steep increase in the level of the land adjacent to this. This is not shown on the plans submitted with the LDC application, but can be seen in the photographs of the site provided in the Council's statement.

27. In view of the width of the proposed extension, in order to construct the development as shown on the plans there would be a need to carry out substantial excavation works to remove a part of the bank, along with engineering works to support the remaining land to the north-west of the dwelling. The works necessary would amount to more than ground preparation. The extent of the works necessary would amount to an engineering operation that would fall within the meaning of development under section 55(1) of the 1990 Act, as suggested by the Council.

28. I acknowledge that the engineering operation would only be carried out to facilitate the extension, and that it might be carried out with the work to construct the extension as a single process. Nevertheless, it would comprise a substantial engineering operation, the nature of which I cannot find to be ancillary to the works to construct the extension. Indeed, having regard to the location of the proposed extension, on the boundary shared with Flint Cottage, the works would have their own impacts, separate to those of the extension.

29. For the reasons given above, I find as a matter of fact and degree that the engineering operation that would be necessary to carry out the development proposed would be a separate activity of substance. I do not find this to be the same in character as the enlargement, improvement and alteration of a dwellinghouse permitted by Class A. It would not, therefore, be permitted by Class A. No other part of the 2015 Order has been drawn to my attention that might permit these works and there is no suggestion that the works are otherwise permitted. Accordingly, I conclude that the proposed north-west extension would not be lawful if instituted or begun on the date the LDC application was made.

30. In addition to the above, as with the north-east extension, the plans indicate that the materials to be used in the exterior work of the extension would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. For this reason, I again conclude that the development would not be lawful if instituted or begun on the date the LDC application was made because it would have been carried out in breach of condition A.3(a) imposed on the planning permission that is granted by Class A.

**Conclusion**

31. 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 ground floor extension to the north-west and north-east elevations 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.

*J Moss*

INSPECTOR