



Appeal Decision

Site visit made on 27 April 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/L5810/X/22/3293972

22 Orchard Road, Twickenham TW1 1LY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Fletcher against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 21/2697/PS192, dated 29 July 2021, was refused by notice dated 15 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 described as: "Proposal to repair the existing cellar, keeping its floor area and volume as existing. The existing cellar is currently accessed via a primitive ladder from the kitchen. The existing access is completely unsuitable for safe, daily domestic use, therefore it is proposed to improve its access, by installing a flight of steps (in line with building regs), down from the kitchen to the cellar. It will retain its current use as utility space, functionally supporting the kitchen which is located directly above at ground level."
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr John Fletcher against Richmond Upon Thames London Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I am obliged to use the description as set out on the application form. The Council re-described the proposal on their decision as "proposal to repair the existing cellar, keeping its floor area and volume as existing. Installation of a flight of steps (in line with building regs) down from the kitchen to the cellar."

Main Issue

4. The main issue is whether the Council's decision to refuse the LDC was well founded. The onus of proof in LDC cases is upon the appellant and the standard of proof is on the balance of probabilities. The planning merits of the proposal are not relevant and the only matter for me to consider is whether what is proposed would or would not require planning permission.

Reasons

5. The proposed works would involve removing existing steep, ladder type steps that lead into the existing basement from the kitchen of the house. The floor area of the basement would not be increased. The creation of the new steps would require removal of material at the rear of the basement and taking away some of the floor of the kitchen and ground below it.
6. Planning permission is required, by reason of s57 of the Act, for the carrying out of any development of land. Section 55 of the Act defines the meaning of "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land", amongst other things. Section 55(2) of the Act provides confirmation about what operations shall not be taken to involve "development of land". This includes at sub-section (2)(a) "the carrying out for the maintenance, improvement, or other alteration of any building of works which: (i) affect only the interior of the building or (ii) do not materially affect the external appearance of the building and are not works for making good war damage or works begun after December 5, 1968 for the alteration of a building by providing additional space in it underground."
7. The work would require removal of material beneath the existing floor of the house to enable the construction of the steps with the result that an additional void would be created. With respect to s55(2)(a)(i), the works would go beyond the existing rear wall of the cellar and into land underneath the floor of the kitchen which could not reasonably be considered therefore as affecting only the interior of the building.
8. Also of importance to the consideration of s55(2)(a)(ii) is what is meant by the term "space in it underground". The building works would go underground. The term "space" is however not defined in the GPDO and so it is necessary to interpret it in the normal sense of the word. The Act does not state that this must be useable floorspace but my normal understanding of the word in this context is that the void or volume created should have some utility and be more than a trifling increase. The void would enable the access of the existing floor-area of the cellar and as a matter of fact and degree it therefore provides additional space.
9. The works would be underneath the dwelling and not visible from outside therefore not affecting the external appearance of the building above ground. However, the works would not be internal within the building and additional space would be created underground. As such, the proposal could not therefore be excluded from the definition of "development" as it would be beyond the scope of s55(2)(a)(i) and (ii) of the Act.
10. Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO) grants planning permission for specific classes of "permitted development" which are then set out in Schedule 2. The enlargement, improvement or other alteration of a dwellinghouse, which can include basement extensions, are permitted subject to the conditions and limitations as specified in Schedule 2, Part 1, Class A. However, a direction order has been made under the provisions of Article 4 of the GPDO which has 'Seal Register Reference Number: 28564/03'. This disapplies the permission granted by Article 3 of the GPDO "consisting of the formation of basements light wells rooms cellars or any other type of usable space or space complementing other useable space beneath a private dwelling-house or below

ordinary ground level in proximity to a private dwelling” (*sic*). As the creation of the steps would complement other useable space, Class A permitted development rights do not authorise the proposed operational development.

Other Matters

11. A confusion arose when I requested a copy of the Article 4 direction applicable to the proposed development. The Council incorrectly sent the order that had ‘Seal Register Reference Number: 28563/03’ which, whilst also removing the same permitted development rights, only applies to specified “flood hazard areas” which the appeal site does not fall within.
12. The appellant has referred extensively to the communications and opinions of officers of the Council regarding the need for planning permission. These opinions were expressed over a substantial period of time including by an officer dealing with a planning application for the extension of the cellar. Furthermore, email correspondence was provided by the Council officer confirming their view that works would not constitute “development”.
13. Notwithstanding the above circumstances, for the reasons that I have set out above, I consider that the proposal would constitute development and that it would not be permitted development. This is an interpretation of the statute and statutory instrument as well as the Article 4 direction order. Even if the works being discussed prior to the application for the LDC were the same as those then discussed, the correspondence and assurances provided by the Council officers, were not formal determinations. The statutory basis of considering whether or not planning permission was required is not changed by that advice. There is a statutory procedure for determining whether proposals require planning permission and that is through the submission of an LDC and this appeal is part of that process.

Conclusion

14. For the reasons given above I conclude on the balance of probability that the Council's refusal to grant a certificate of lawful use or development in respect of a: “proposal to repair the existing cellar, keeping its floor area and volume as existing. The existing cellar is currently accessed via a primitive ladder from the kitchen. The existing access is completely unsuitable for safe, daily domestic use, therefore it is proposed to improve its access, by installing a flight of steps (in line with building regs), down from the kitchen to the cellar. It will retain its current use as utility space, functionally supporting the kitchen which is located directly above at ground level”, 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.

Andy Harwood

INSPECTOR