
Appeal Decision

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2023

Appeal Ref: APP/E5330/X/22/3311298
469 Footscray Road, London SE9 3UH

- 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 Huma Chaudry against the decision of Royal Borough of Greenwich Council.
 - The application Ref 22/2208/CP, dated 28 June 2022, was refused by notice dated 26 August 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The development for which a certificate of lawful use or development is sought is Proposed single storey rear extension and garage conversion.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Given the nature of the development that is proposed and the submissions in the appeal, there was no need to visit the site before making my decision.

Reasons

3. The main issue in the appeal is whether the Council's decision to refuse to issue a certificate of lawful development was well founded. The onus lies with the Appellant to make his case on the balance of probability.
4. The Appellant made an application¹ to the Council for a determination as to whether prior approval was required for a proposed larger home extension, (the 'Prior Approval application'). The Council determined that Prior Approval was not required. Following this, the Appellant applied to the Council for the certificate that forms the subject of this appeal; the reason for the appeal being "It may be the case that the case officer did not read or considered our case correctly and missed that we already have prior approval for the exact same designs".
5. Section 192(1)(b) of the Act states that "If any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question". The question to be asked is whether the development applied for

¹ Council reference - 22/1457/PN1

would be lawful if begun on the date that the application was made. The onus is on the appellant to make their case on the balance of probabilities.

6. The submissions show that the schemes proposed in both the Prior Approval and certificate applications to develop this two-storey detached dwelling were the same. They show, amongst other things, a single-storey extension 6m in depth from the rear of the house with a maximum height of 3.55m. The evidence shows that there was originally a single storey element at the rear of the house and that a first floor was later added to this. For the purposes of my assessment, therefore, the depth of the extension is to be measured from the exterior of the original single-storey element.
7. I have copies of the two Officer reports into these applications. Both were assessed against the terms of Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class A sets out that the enlargement, improvement or other alteration of a dwellinghouse would be lawful, subject to listed criteria and conditions being met.
8. The reports into the two applications are set out in tabular form. Each of the criteria in Class A are rehearsed, comments made on them in respect of the proposed development and, lastly, a determination as to whether the development complies with each criterion. The tables for the two are identical, save for their references to Class A.1(f) and A.1(g). The former states that "subject to paragraph [Class A.1] (g)" if "the enlarged part of the dwellinghouse would have a single storey and — (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse; or (ii) exceed 4 metres in height", it would not be permitted development under this criterion.
9. In the report on the Prior Approval application, in respect of this criterion the 'Comment' made was "N/A" and that for whether the proposal complies with the criterion was, again, "N/A".
10. In the report into the certificate proposal, the 'Comment' was "The proposed rear extension bring forward a 6m rear extension. The extension would not exceed 4m in height. The development is therefore contrary to this criteria" [sic]. The finding on whether the development complies with the criterion was "No".
11. Both reports set out that the site is not a Site of Special Scientific Interest, neither is it on Article 2(3) land², that is to say it is not in a conservation area, an area of outstanding natural beauty, an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, the Broads, a National Park or a World Heritage Site. In such circumstances, subject again to meeting certain criteria and conditions, permitted development rights in A.1(g) allow for an enlargement of a dwellinghouse that would have a single storey unless it were to "(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height".

² Defined in Schedule 1, Part 1 of the GPDO

12. Amongst the conditions attached to development that is not allowed by Class A.1(f) but is allowed by paragraph A.1(g), set out in A.4, is that the local planning authority must notify each adjoining owner of the development, allowing time for them to comment. Comments received must then be taken into account before reaching a decision. Development must not begin before the occurrence of one of the following: (a) the receipt by the developer from the local planning authority of a written notice that their prior approval is not required; (b) the receipt by the developer from the local planning authority of a written notice giving their prior approval; or (c) the expiry of 42 days following the date on which the information referred to in sub-paragraph (2) was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.
13. The only evidence I have of the processing of the Prior Approval application by the Council is the Officer's report. However, it sent written notice on 6 June 2022 that its Prior Approval was not required and so requirement (a) was fulfilled. Its reason for this being "The proposed structure falls within the limits of permitted development as set out in Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such, Prior Approval is not required in this instance". Given this decision, I can only assume that the Council undertook the required neighbour consultation, though I have seen no evidence of this.
14. The reason given for refusing to issue a certificate of lawfulness on 26 August 2022 was that "The proposed structure falls outside the limits of permitted development as the development would be contrary to Schedule 2, Part 1, Class A, Criteria A.1(f) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Planning permission is therefore required for the proposed works".
15. This is correct as far as it goes. However, the assessment in the Officer's report for the certificate application should not have found criterion A.1(g) to be non-applicable. After determining that the proposed development fell outside the parameters in A.1(f) by reason of its depth, it should have moved on to an assessment of A.1(g). Its terms were applicable to the proposed extension, as the Council found to be the case in the Prior Approval application. Had it done so, it would have identified that the extension was within its maximum dimensions, as it had previously.
16. It should then have identified that there is no legal mechanism in an application for a certificate to fulfil the requirement under A.1(g) to consult with neighbours. As an extension of the size that is proposed cannot be adjudged to be permitted development without this consultation, so the certificate could not be issued. This is a matter that has to be addressed through the Prior Approval process, as had already been done.
17. Therefore, whilst the wording of its reason for refusal was wrong, in the circumstances the Council's decision to refuse to issue a certificate under s192(1)(b) was correct. However, there is nothing in the evidence to suggest that the Prior Approval decision was incorrect, nor that it would be affected by the decision to refuse to issue the certificate.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Proposed single storey rear extension and garage conversion 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.

Roy Curnow

Inspector