



Appeal Decisions

Site visit made on 23 May 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal A Ref: APP/G5180/X/22/3295969

54 Havelock Road, Bromley BR2 9NZ

- 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 Dave Simpson against the decision of the Council of the London Borough of Bromley.
 - The application ref DC/21/04371/PLUD, dated 3 September 2021, was refused by notice dated 7 January 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 single storey side extension.
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Appeal B Ref: APP/G5180/X/22/3302011

54 Havelock Road, Bromley BR2 9NZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Dave Simpson against the Council of the London Borough of Bromley.
 - The application ref DC/22/01186/PLUD is dated 11 March 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 demolition of existing garage and building of a replacement garage.
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Appeal C Ref: APP/G5180/W/22/3302013

54 Havelock Road, Bromley BR2 9NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Dave Simpson against the Council of the London Borough of Bromley.
 - The application Ref 22/01114/FULL6, is dated 11 March 2022.
 - The development proposed is replacement garage to end of garden.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed garage which is found to be lawful.

Appeal C

3. The appeal is dismissed.

Application for costs

4. An application for an award of costs was made by Mr Dave Simpson against the Council of the London Borough of Bromley in respect of appeal C. A duplicate of this application for costs also appears within appeal B, albeit that the application refers to the Council's application reference number for the planning application the subject of appeal C, rather than to the subject matter of appeal B. For the purposes of this matter I have treated the application as a single application for an award of costs in relation to appeal C. This application is the subject of a separate Decision.

Preliminary Matters

Appeal A

5. Appeal A relates to the Council's refusal to grant a certificate of lawful use or development (LDC) for a proposed single storey side extension. Neither the refusal reason set out in the Council's decision nor the delegated officer report refer to a specific paragraph of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order). The Council's appeal submission expands on the reason for refusal and refers to consideration of the proposal against paragraphs A.1.(f) and A.1.(j), with regard to a side and a rear extension. The appellant sought initially to rely upon the provisions of paragraph A.1.(j) of the Order in relation to enlargements beyond a wall forming a side elevation of the house but did subsequently address the matters raised by the Council in relation to paragraph A.1.(f).
6. The appellant has stated that at the time the application was made the operations proposed within the application had not commenced. Subsequent correspondence between the appellant and the Council appears to confirm that works had started prior to the Council's formal determination of the application. I have determined the appeal accordingly.
7. During my visit to the site I saw that whilst the appeal property's internal ground floor layout differed from that shown on the plans before me¹, an extension in the location shown on those plans had been constructed and was occupied. I am satisfied however that the extension as constructed does not materially differ from that for which the LDC was initially sought, and I have determined the appeal accordingly.

Appeals B and C

8. Appeals B and C relate to a proposed detached double garage in the same location as each other within the rear garden area; the former in relation to an application for an LDC for a flat roofed garage and the latter in relation to an application for planning permission for a pitched roof garage. The appellant's appeal submissions, duplicated in relation to both appeal B and C, refer to just the planning application reference number (appeal C) and set out little justification beyond the Council's failure to determine the applications within the prescribed period. The Council, for its part, confirm that it does not wish to defend either appeal B or appeal C.

¹ Drawing No: 1062-03PL Rev A submitted in connection with LPA Ref No: 21/04371/PLUD

9. With specific regard to appeal B, in setting out my decision I have limited the description of the proposed development to a 'garage' omitting from the description of development those descriptive elements that are not acts of development.

Appeal A

Main Issue

10. Having regard to the above the main issue in relation to appeal A is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

11. Section 192(1) of the Town and Country Planning Act 1990 (as amended) (the Act) provides for the making of an application to ascertain whether, *inter alia*, any operations proposed to be carried out in, on, over or under land, would be lawful at the time of making that application². The onus in such applications is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant to the consideration of such matters.
12. Subject to limitations and conditions, Class A, Part 1 of Schedule 2 of the Order permits the enlargement, improvement or other alteration of a dwellinghouse. The appellant's case for the extension's lawfulness is made on the basis that, as a side extension, the proposed extension would not exceed the limitations set out at paragraph A.1.(j)(i), (ii) and (iii).
13. It is reasonably clear from the reasoning set out in the officer report and, with greater clarity and more detail within the appeal statement, that the Council consider the proposed extension to extend beyond the rear wall of the dwellinghouse, rather than solely beyond a side elevation as initially argued by the appellant. As such, the Council argue that the provisions of paragraph A.1.(f)(i) and (ii) should also apply.
14. The guidance set out within the '*Permitted development rights for householders - Technical Guidance*'³ (the Technical Guidance) helpfully provides assistance in understanding the constituent elevations of a dwellinghouse for the purposes of interpreting Class A. Thus, the rear wall, or walls, are defined as those which are directly opposite the front of the house. It goes on to state that a wall forming a side elevation of a house can be any wall that cannot be identified as being a front wall or a rear wall.
15. There is no dispute that the elevation facing towards Havelock Road is the front elevation or that, in turn, the rear elevation of the outrigger forms the rear elevation for the purposes of Class A, being as it is directly opposite the Havelock Road elevation. Using the examples and notations cited in the Technical Guidance⁴, the outrigger's rear (southwest facing) elevation would be 'wall A'. The same example also indicates that there may be more than one rear wall, referring also to 'wall B'. That is the case at the appeal property. It also follows that the return elevations of the outrigger are side elevations for this purpose.

² Section 192(1)(b) Town and Country Planning Act 1990 (as amended)

³ Published September 2019 by the [then] Ministry of Housing, Communities & Local Government

⁴ Page 24

16. The Council does not dispute the appellant's case that the extension does not exceed the limitations set out at paragraph A.1.(j)(i), (ii) or (iii). Nor, from the evidence before me, do I.
17. However, both parties cite the Technical Guidance in their submissions to support their respective cases, quoting the section on 'rear and side extensions'. That guidance clearly states in relation to rear and side extensions that where an extension fills the area between a side elevation and a rear wall, then the restrictions on extensions beyond rear walls and side walls will both apply. The same is true of side extensions extending beyond rear walls; the limitations of both categories will apply. There is, therefore, merit in the Council's case with regard to consideration of the appeal scheme as an extension beyond the rear wall of the original dwellinghouse.
18. I disagree with the appellant's interpretation of the Technical Guidance that the appeal scheme cannot be considered to be a rear and side extension because it does not completely infill the area between a side elevation and a rear wall, or because the extension does not touch the elevation of wall B. Whilst I have noted the appellant's position in these respects, the example on page 24 of the Technical Guidance is not dissimilar to that of this appeal scheme. The Technical Guidance also advises that any extension on a side wall that extends beyond a rear wall, but is not attached to the rear wall, will be subject to the restrictions that apply to rear walls as well as those to side walls.
19. Thus, using the notations given in the example set out on page 24 of the Technical Guidance and applying them to the appeal scheme, although the proposed extension would not extend beyond rear wall A, it would extend beyond rear wall B even though not attached to it. The advice in the Guidance in this respect makes reference to the rear wall as a datum point for measuring the depth of the extension from, not that it must touch it.
20. With regard to the cited example of rear wall B the parallels with the appeal scheme are clear. The plans submitted with the LDC application are clearly annotated to show an extension with a depth of 4.423 metres with a gap from wall B to the extension of 1.7 metres. Together, this gives an extension that extends beyond the rear wall of the dwellinghouse by more than 6 metres.
21. I am satisfied therefore that whilst the proposed extension does not exceed the limitations set out at paragraph A.1.(j)(i), (ii) or (iii), the provisions of paragraph A.1.(f) and A.1.(g) are of relevance. The Technical Guidance's reference to a depth of 6 metres assumes application of paragraph A.1.(g) of the Order in providing for extensions of up to 6 metres in the case of the appeal property. However, those provisions are subject to paragraph A.4. which sets out a process of prior notification, neighbour consultation and confirmation from the local planning authority whether or not their prior approval is required.
22. As works have commenced and been completed, the appeal scheme cannot benefit from the limitations and provisions of paragraph A.1.(g) which requires a process of prior notification. The Council is therefore correct to assess the proposal against paragraph A.1.(f). As the extension would extend beyond a rear wall of the original dwellinghouse by more than 3 metres it would not fulfil the criteria set out in Class A, Part 1 of Schedule 2 of the Order. In this respect, the Council's decision to refuse the application for an LDC was well-founded and appeal A should fail.

Other Matters

23. The appellant has expressed frustration with the consistency and timeliness of advice and feedback from the Council during the course of its determination of the application. These are not matters before me in relation to an appeal made under section 195 of the Act however and these matters have therefore had no bearing on the outcome of this appeal.

Appeal B

Main Issue

24. With regard to appeal B, following its failure to determine the application the Council has also stated that it does not wish to contest the appeal. However, as the appeal has not been withdrawn by the appellant it remains for me to determine. The main issue is therefore whether or not the proposed garage would, at the point at which the application was made, have been lawful by virtue of Class E, Part 1 of Schedule 2 of the Order.

Reasons

25. The purposes of an application under section 192(1)(b) of the Act are described above in relation to appeal A, as is the burden of evidence in setting out a case. I do not intend to repeat them here. Class E, Part 1, Schedule 2 of the Order provides for the construction within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse. The permission granted by Class E is subject to the limitations, restrictions and conditions set out within paragraph E.1.(a) to (k) and at paragraphs E.2, E.3 and E.4.
26. Neither main party has submitted a statement specifically relating to this appeal. The plans and elevations submitted with the application are annotated with the dimensions of the proposed garage. The Council has not challenged these. Given the Council's position not to contest appeal B and on the basis of the evidence before me, particularly the plans and elevations annotated with dimensions, I conclude that on the balance of probabilities the proposed flat-roofed garage would be lawful. In reaching this conclusion, I have considered the proposal against the provisions of Class E, Part 1 of Schedule 2 of the Order.

Appeal C

Background and Main Issues

27. The Council failed to determine the application for planning permission within the prescribed time period but has provided a Statement of Case in relation to appeal C which identifies the main issues (as the Council see them) in respect of the proposal as being design, neighbouring amenity and highways. Having considered these matters the Council concluded that it did not wish to contest the appeal against its failure to determine the application.
28. The Council has also cited highways matters as a main issue, but the delegated officer report noted that there were no technical objections to the proposal on grounds of highway safety or parking pressure. This is not a contested matter between the main parties, nor was it raised as a point of objection by local residents. I have not been presented with any further compelling submissions

that would lead me to reach an alternative conclusion in this respect so I have not considered this matter further.

29. Nevertheless, having regard to representations made to the planning application from local residents, I consider the main issues in relation to appeal C to be broadly consistent with those identified by the Council with regard to the effects of the proposed development upon:

- Living conditions; and.
- Character and appearance of the surrounding area.

Reasons

Living conditions

30. The garage would be located to the southeast of the rear portion of the neighbouring garden plot at 52 Havelock Road. As with the gable elevation that the proposal would present to Marlborough Road, the opposing elevation adjacent to the foot of the rear garden of No. 52 would be sizeable in both its length and height.

31. The detached double garage would extend for a substantial length directly adjacent to the garden boundary with No. 52. Although there is a shed partially adjacent to the proposed location of the garage, the length of the garage's rear gable elevation and, particularly its height, would result in a dominant and overbearing structure that would also, at certain times of the day, give rise to the direct overshadowing of, and loss of light to, extended parts of the rear garden of No. 52. Cumulatively, these factors would fail to respect, and thus cause harm to, the living conditions of occupiers of No. 52, contrary to the aims and provisions of Bromley Local Plan (LP) Policy 37 in respect of good design and the living conditions of occupiers of nearby properties.

32. Whilst I am mindful of my conclusions in respect of appeal B, I am satisfied that the scheme set out herein is sufficiently distinct from that considered at appeal B that my conclusions there do not create a compelling fallback position in the current instance.

Character and appearance

33. The properties within the residential terraced perimeter block made up by Havelock Road and Great Elms Road, and crossed by Marlborough Road, generally have long, but narrow, rear gardens. This is particularly evident in the case of the appeal property given its location relative to Havelock Road and Marlborough Road. The property to the rear, on Great Elms Road, has a detached double garage with a pitched roof at the foot of its garden, directly adjacent to the proposal in this instance.

34. The Council concludes, in its Statement of Case, that the proposed location of the garage would be generally acceptable in terms of character and appearance. I agree. It is not uncommon to see detached garages in such positions in rear gardens where access can be taken directly from one of the roads forming the perimeter block and, indeed, there is already one within the neighbouring garden plot. The garden plot at the appeal property is of a substantial depth and, although I saw that it had been sub-divided at the time of my visit, a modestly sized garden plot and patio areas would be retained on either side of the divide.

35. Although the orientation of the garage's roof and ridge line would mean that it would present a sizeable gable elevation to the Marlborough Road frontage, it would not be excessively or uncharacteristically large in the context of the street. Whilst there would be a degree of conflicting roof angles with those of the adjacent garage, I am satisfied that these would not be harmfully or incongruously so.
36. I have carefully considered the representations made to the planning application, and particularly the comparisons made by local residents with the smaller garage, previously in the same location, that the proposal would replace. However, for the reasons set out above, I find no harm in respect of the proposed, larger, replacement garage with regard to its effect on character and appearance and there would be no conflict with the general design aims and provisions of LP Policies 6 or 37. This does not, however, overcome my findings above regarding harm to living conditions.

Conclusions

37. With regard to appeal A, for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey side extension 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.
38. For the reasons given above with regard to appeal B, I conclude, on the evidence now available, that the development would not fail to meet the limitations under paragraphs E.1(a) to (k) of the Order. Nor has an argument been advanced that the proposed garage would be in conflict with the limitations set out at paragraphs E.2 or E.3. In this respect, I conclude that the appeal should succeed and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
39. Finally, with regard to appeal C, for the reasons set out and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 March 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of a garage is permitted development pursuant to Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

G Robbie

INSPECTOR

Date: 27 June 2023

Reference: **APP/G5180/X/22/3302011**

First Schedule

Garage

as illustrated on the following drawings:

Drawing No: 1062-07PL – Plans and Elevations as Proposed

Second Schedule

Land at 54 Havelock Road, Bromley BR2 9NZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 June 2023

by G Robbie BA(Hons) BPI MRTPI

Land at: 54 Havelock Road, Bromley BR2 9NZ

Reference: APP/G5180/X/22/3302011

Scale: Not to Scale

