



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/N4720/X/22/3313210
407 Whitehall Road, Leeds LS12 6LB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Ms Abida Khanum against the decision of Leeds City Council (the LPA).
 - The application Ref 22/06668/CLE, dated 27 September 2022, was refused by notice dated 19 October 2022.
 - The application was made under section 191(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 outbuilding to rear.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal can be determined without a site visit without causing injustice to any party as I am satisfied I can reach a decision based on the evidence submitted.

Main Issue

3. The main issue is whether the LPA's decision to refuse the LDC application as well-founded.

Reasons

4. S191(2) of the Act states that operations are lawful at any time if, (a) no enforcement action may then be taken in respect of them; and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. S57(1) of the Act states that planning permission is required for the carrying out of any development of land. S171A(1) of the Act sets out that carrying out development without the required planning permission is a breach of planning control.
6. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2.

7. Class E of Part 1 of Schedule 2 describes the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development. Development is not permitted under Class E if any of the limitations in paragraph E.1 are met. E.1(e) says development is not permitted if the height of the building would exceed (ii) 2.5m in the case of a building within 2m of the boundary of the curtilage of the dwellinghouse. The parties agreed the outbuilding is within 2m of the boundary. Thus, if the height of the outbuilding exceeds 2.5m, it will not be permitted development.
8. The outbuilding sits on a raised area. The submitted plans indicate that, including the raised area, the overall height of the building would be 2.85m. Not including the raised area, the height would be 2.45m. The LPA states that, since the outbuilding sits on a raised area, the overall height should be taken to be 2.85m and thus, it is not permitted development.
9. In contrast, the appellant argues that the land levels of the raised area have been in place since 2008 at least. The appellant points to photographs which show the previous garage building raised above the ground level of the rear garden. Images also show that the land levels on the western side of the current building facing Prince Edward Road are higher than those on the northern side within the garden. The appellant says, at that point, the building is 2.45m in height from ground level.
10. In any event, the appellant says there is nothing within the GPDO that says the reference to ground level in the limitation has to be the original ground level. The Permitted Development Rights for Householders Technical Guidance September 2019 (the Technical Guidance)¹ states that references to height mean the height measured from ground level. It states that ground level is the surface of the ground immediately adjacent to the building and where the ground level is not uniform, then the ground level is the highest part of the surface of the ground next to the building. However, the definition within the Technical Guidance does say that ground level would not include any addition laid on top of the ground such as decking. The laying of a raised hard surface to accommodate a building would in my view constitute an addition laid on top of the ground and thus it should not be counted as constituting ground level.
11. In any event, regardless of whether the raised area here was the original ground level, or whether it is an addition laid on top of the ground, the outbuilding as constructed is not accurately reflected on the plans. The plans show that the top of the windows and doors in the northern elevation are at eaves level. In contrast, in the constructed building, there is an area of wall between the top of the windows and door and the roof. The LPA indicate that the area measures around 0.5m.
12. The appellant does not address this point in their submissions, giving no indication for the discrepancy between the plans and the as built development. Moreover, there is no dispute of the LPA's submissions that there is an extra 0.5m between the windows and door and the roof which is unaccounted for on the plans. Nor does the appellant indicate what the height of the building is as constructed. Rather, the appellant only refers to what height is shown in the plans.

¹ Published by the then Ministry for Housing Communities and Local Government

13. Thus, even if ground level is taken to be the top of the raised area, then the overall height of the outbuilding from ground level would be 2.95m, taking the appellant's height of 2.45m plus the additional 0.5m height which the LPA say is not shown on the plans. In the absence of contrary evidence from the appellant, I am led to conclude that their evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the height of the outbuilding is 2.5m or less.
14. As a result, I find that the limitation under paragraph E.1(e)(ii) is met and consequently, the outbuilding would not have been permitted development under Class E of Part 1 of Schedule 2 of the GPDO. Therefore, planning permission for the outbuilding would not have been granted by Article 3(1) of the GPDO.
15. I conclude, therefore, that at the date the LDC application was made, the development would not have been lawful as enforcement action may have been taken in respect of it, since it would have constituted a breach of planning control under S171A(1) of the Act.

Conclusions

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 an outbuilding to rear 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.

J Whitfield

INSPECTOR