
Appeal Decision

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/G5180/X/23/3319250
51 Furzehill Square, Orpington BR5 3SN

- 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 Mr Peter Gatfield against the decision of the Council of the London Borough of Bromley.
 - The application Ref: DC/23/00129/PLUD, dated 15 January 2023, was refused by notice dated 22 March 2023.
 - 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 described as: "Single storey rear addition with insulated flank walls sited fully on Applicants land. Felt covered flat roof with parapets provided over plus rooflight to centre. Bi-fold fully glazed doors will lead out onto the garden. The rear elevation brickwork will match the existing, returned around the corner onto the painted rendered flank walls (see drawing SK01 and site location plan)."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. I have not undertaken a site visit, but instead made a desk-based assessment to determine this LDC appeal, which relates purely on the basis of legal interpretation of the facts. This is deemed appropriate given that I am not considering the planning merits of the proposal.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed single storey rear

extension would be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

5. The application submitted to the Council sought confirmation that the proposed rear extension constitutes permitted development (PD) by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, the Council highlight that permitted development rights have been removed by way of a planning condition on the original approval¹.

6. In order to benefit from any planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition 5 attached to the original permission restricts such development, and states:

"Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1988 (or any order amending, revoking and re-enacting this order) no building, structure or alteration permitted by Class A, B, C or E of Part 1 of the Second Schedule to the 1988 Order, shall be erected or made within the curtilage (s) of the dwelling (s) hereby permitted without the prior approval in writing of the Local Planning Authority."

7. The wording of the above condition is clear and unambiguous, in so far as it explicitly and implicitly restricts any further extension or additions being carried out unless prior permission has been granted by the local planning authority. No such permission has been approved. As such, the proposed single storey rear extension is not permitted by the GPDO. It is development for which express planning permission is required.

8. I appreciate the appellant's frustration with the Council's handling of their application, that the validation team should have identified this condition which restricted permitted development rights. However, the Council explain that the purpose of the LDC is to ascertain if the development applied for is lawful or not. This assessment is only made once the application is valid since the process can require substantial investigation which would not be within the remit of the validation team. In any event, the Council's handling of the application is not a matter for me to consider under this appeal.

Conclusion

9. The development would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey rear 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.

R Satheesan

INSPECTOR

¹ Council ref: 94/02643/FULMAJ for the demolition of existing office buildings and erection of 37 two-bedroom terrace houses and 6 three-bedroom terrace houses.