



Appeal Decision

Site visit made on 18 September 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal Ref: APP/U5930/X/22/3291626

18 Rosslyn Avenue, Chingford E4 6DX

- 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 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 Ms Ceyda Kulah against the Council of the London Borough of Waltham Forest.
 - The application (Ref. 213667) is dated 22 November 2021.
 - 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 demolition of existing single storey side extension and erection of new single storey side extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation considered to be lawful.

Application for costs

2. An application for costs was made by Ms Ceyda Kulah against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether or not the Council's deemed refusal of the LDC application was well-founded.

Background

4. On 5 April 2019 the Council issued an enforcement notice in respect of a single storey side extension built without planning permission at the semi-detached property. The notice required the rear part of that extension to be removed, and such work has been completed in compliance with the notice.
5. Following issue of the notice, there had been an appeal made against it which was dismissed by an Inspector on 18 February 2021¹ ('the dismissed appeal'). The Inspector's decision was then unsuccessfully challenged in the High Court, with the Judge in her reasoning taking into account a Joint Position Statement (JPS) of the parties which included agreed measurements of the side extension and existing dwellinghouse.

¹ APP/U5930/C/19/3227528

Reasons

6. The LDC appeal proposal is for demolition of the whole of the side extension (including the front part which currently remains) and the construction of a new side extension upon the same footprint. However, the eaves height of the new extension would be lower than before - at 2.9m throughout – so as not to exceed the height of the existing dwellinghouse. There would also be a slightly different roof overhang detail in the gap between the new side extension and existing rear extensions at the property, such that no part of the side extension would touch either of the existing rear extensions behind the original house.
7. It is the appellant's intention under this proposal to build a side extension with these design changes to benefit from general planning permission afforded by Article 3(1), Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('Class A of the GPDO'). The Inspector in the dismissed appeal found that that the side extension subject to the notice did not so benefit from these permitted development rights.
8. Section 191(2)(b) of the Act provides that an operation cannot be lawful if it constitute a contravention of any of the requirements of any enforcement notice in force. Clearly, the LDC proposal does not contravene the requirements of the notice as the operational development targeted will have been removed. Further, I do not accept the Council's argument that the proposal constitutes the reinstatement or restoration of buildings or works removed in compliance with an enforcement notice² since development in compliance with Class A of the GPDO is materially different to that which is not. Accordingly, it would be a materially different extension to that which was subject to enforcement action (and one which would be lawful, with planning permission under the GPDO).
9. Class A of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse subject to a number of specified limitations and conditions.
10. While the Council did not issue a Decision Notice in respect of the LDC application, it has set out in its statement the reasons why it considers that the proposal does not benefit from permission under the GPDO:
 - Demolition of the remaining part of the side extension is not permitted under the GPDO without a prior approval process under Part 11;
 - The proposed works would be unlawful under Article 3(5) of the GPDO due to the stated unlawful demolition and alleged unlawful dormer roof extension upon the dwellinghouse; and
 - The appellant has not satisfactorily demonstrated compliance with Class A limitations, namely that: (a) the rear wall of the enlarged part of the dwellinghouse would not extend beyond the rear wall of the original dwellinghouse by more than 3m ('Class A.1(f)'); (b) the development would not extend beyond the side wall of the original dwellinghouse and have a width greater than half the width of the original dwellinghouse ('Class A.1(j)'); (c) the total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) would not exceed specified limits ('Class A.1.(ja)').

² Section 181(3) of the Act.

Demolition

11. Section 55(2)(a)(ii) of the Act excludes from the meaning of 'development' the carrying out for the improvement or other alteration of any building of works which do not materially affect the external appearance of the building. The remaining part of the extension at the front of the property (former garage) is to be demolished as part of the wider combined operations under the LDC proposal, which would essentially replace that element with a structure of very similar appearance with a garage door facing the street (akin to existing). Within this context, and within established planning law principles, I do not consider that the demolition work as part of the appeal scheme constitutes development in its own right requiring permission.
12. Part 11 (of Schedule 2) of the GPDO is therefore not relevant in this appeal (which does not apply to parts of buildings in any case).

Article 3(5)

13. As I have found above, the demolition would not be unlawful and so the Council's argument in this regard falls away.
14. Evidence in the Council's own hand undermines its argument as regards the lawfulness of the dormer roof extension – I have seen a formal communication dated 29 July 2020 to the appellant's agent from the Council's Senior Planning Enforcement Officer which essentially confirms that the development is lawful due to the passing of time. This was underlined by the Inspector in her Decision in the dismissed appeal. I have no reason to find, given both the appellant's and Council's stated view on the evidence before them, that the dormer roof extension is currently unlawful.
15. Therefore, Article 3(5) of the GPDO does not restrict permitted development rights with respect to the LDC proposal.

Class A limitations

16. The parties are not in dispute that the proposed development meets all the limitations and conditions of Class A, other than those cited by the Council above and dealt with below, and I have no reason to find otherwise. Indeed, the new scheme clearly addresses the issue upon which the Inspector in the dismissed appeal spent much time in her Decision – the eaves height of the proposed extension in the appeal before me will not exceed that of the existing dwellinghouse ('Class A.1(d)').

Class A.1(f)

17. The plans of the proposal show the rear wall of the side extension extending 3m beyond the rear wall of the original dwellinghouse. The position of the rear wall of the original dwellinghouse on those plans is consistent with the historic plans of the property provided on 15 February 2017 to the appellant's agent by the Council's Principal Planning Officer.
18. Accordingly, I am satisfied of compliance with this limitation.

Class A.1(j)

19. Again, the position of the side wall of the original dwellinghouse is consistent with the historic plans of the property provided by the Council.

20. The plans of the proposal show the width of the extension to be 3.75m³ and the width of the widest part of the original dwellinghouse⁴ as 7.54m. Therefore, the extension would not have width greater than half the width of the original dwellinghouse (3.77m).

21. Accordingly, I am satisfied of compliance with this limitation.

Class A.1.(ja)

22. It is a matter of fact that the proposed side extension will not be physically joined to any existing enlargement of the original dwellinghouse. The changes to the design of the extension relative to the unlawful one have ensured that.

23. The gap between the proposed side extension and rear extensions is agreed at 0.75m. The Council says that this is a 'sham' gap, which effectively does not count.

24. However, the Cambridge English dictionary defines the meaning of the word 'join' as 'to connect or fasten together'. This description is consistent with the diagram on page 27 of the *Permitted development rights for householders - Technical Guidance* (2019)⁵ which shows a rear extension and a side extension connected to each other thereby aggregating the 2 extensions. I give weight to that guidance as a highly relevant and material aid to the interpretation of Class A of the GPDO. There is nothing in the guidance (or the legislation itself) that says that a gap can be discounted and treated as a join.

25. Further, this is a gap that cannot be regarded as *de minimis*. It has a functional use as a patio and thoroughfare between the side door of the rear extension and garden. This distinguishes the case before me from the appeal decisions⁶ raised by the Council where the gaps were much smaller and did not have the same functional features.

26. Accordingly, I am satisfied of compliance with this limitation.

Conclusion

27. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of demolition of existing single storey side extension and erection of new single storey side extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

³ The Council does not directly dispute this figure, but merely cites the measurement given for the (narrower) width of the front of the original dwellinghouse provided on the application plans (7.48m).

⁴ *Permitted development rights for householders - Technical Guidance* (2019); Ministry of Housing, Communities and Local Government; p23: "The width of the original house should be calculated at its widest point".

⁵ *Permitted development rights for householders - Technical Guidance* (2019); Ministry of Housing, Communities and Local Government; p27.

⁶ APP/Y1945/X/16/3151883; APP/J0350/D/17/3183507.

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 22 November 2021 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development benefits from general planning permission afforded by Article 3(1), Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Andrew Walker

Inspector

Date: 19th October 2023

Reference: APP/U5930/X/22/3291626

First Schedule

Demolition of existing single storey side extension and erection of new single storey side extension (Drawing numbers RA.01.07, RA.01.08, RA.01.01 F).

Second Schedule

Land at 18 Rosslyn Avenue, Chingford E4 6DX

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 19th October 2023

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

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Scale: Do not scale

