



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **23 November 2023**

Appeal Ref: APP/U5360/X/22/3312313

66 Southgate Road, Hackney, London N1 3JF

- 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.
 - The appeal is made by Mr Simon Pritchard against the decision of London Borough of Hackney.
 - The application ref 2022/1776, dated 15 July 2022, was refused by notice dated 14 September 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 described as a ground floor rear single storey 3m extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Preliminary Matters

2. It has not been necessary to visit the site. This is because all the required information is included with the application and appeal documents, and a decision can be reached on the papers. Both parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

5. This is whether the Council's refusal to issue an LDC was well founded. The decision turns on whether the proposal is permitted development under Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

6. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 of the Order. It includes at Part 1, Class A, the enlargement, improvement or other alteration of a dwellinghouse. This is subject to the limitations set out in paragraphs A.1 and A.2 and the conditions in paragraph A.3.
7. It was the council's view that the proposed rear extension would be within 2m of the boundary of the curtilage of the dwellinghouse and the overall height of the proposal would exceed 4m and the eaves height would exceed 3m. It would therefore fail to comply with f(ii), g(ii) and (i) of Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and would not constitute permitted development.
8. Technical Guidance for permitted development rights for householders published by the Ministry of Housing, Communities and Local Government September 2019 provides that for the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope.
9. To the rear of the property, the lower ground floor is below the level of the garden. To allow for access from the proposed rear extension to the garden, part of the garden would be excavated close to the door. Steps would lead up from the door in the proposed extension to the garden. The remaining garden area would be at the original higher level.
10. Article 2 (2) of the GPDO, 'interpretation', states that unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.
11. The drawings show that the extension when measured from the highest ground area next to the proposal, the extension would not extend beyond 3m to the eaves and 4m to the ridge. The annotated application drawings propose that the slate roof and the facing brickwork will match the existing building thereby complying with condition A.3 of Class A.

Conclusion

12. 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 ground floor rear single storey 3m 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.

S A Hanson 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 15 July 2022 the development 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 extension when measured from the highest ground area next to the proposal, would not extend beyond 3m to the eaves and 4m to the ridge. It would therefore comply with Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and would constitute permitted development. The annotated application drawings propose that the slate roof and the facing brickwork will match the existing building thereby complying with condition A.3 of Class A.

Signed

S A Hanson
INSPECTOR

Date 23 November 2023

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First Schedule

The erection of a ground floor rear single storey 3m extension as shown on Drawing Nos. 095b-GA-100, 095b-GA-101, 095b-GA-102, 095b-GA-200 and 095b-GA-301,

Second Schedule

Land at: 66 Southgate Road, Hackney, London N1 3JF

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 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated 23 November 2023

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Scale: Not to scale



North