



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 11th December 2023

Appeal Ref: APP/N4720/X/23/3321155

14 The Drive, Alwoodley, Leeds LS17 7QA

- 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 Mr Richard Black against the decision of Leeds City Council (the LPA).
 - The application Ref 22/04444/CLP, dated 27 June 2022, was refused by notice dated 9 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 to extend the first floor of the property within the footprint of the existing building over part of an existing rear flat roof extension.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal form indicates that the application was made under S191 of the Act. However, the application form indicates it was seeking an LDC for a proposed development. LDCs for proposed development fall to be considered under S192 of the Act. That is the basis on which the LPA determined the application, and I will therefore deal with the appeal on the same basis.

Application for Costs

3. An application for costs was made by Leeds City Council against Mr Richard Black. This application is the subject of a separate Decision.

Main Issue

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

Reasons

5. S191(2) of the Act states that operations are lawful at any time if (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. There is no dispute that the proposal involves development for the purposes of S55 of the Act. The dispute is whether planning permission was granted for the development at the date the LDC application was made.
7. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2.
8. Part 1 of Schedule 2 of the GPDO relates to development within the curtilage of a dwellinghouse. Class A of Part 1 defines the enlargement, improvement or other alteration of a dwellinghouse as permitted development. Development is not permitted by Class A if any of the limitations set out under paragraph A.1 are met. In addition, permitted development under Class A is subject to the conditions set out in paragraph A.3.
9. The LPA refused the LDC application on the basis that the proposed development would meet several of the limitations under Class A and would therefore not be permitted development. In its reasons for refusing the LDC, the LPA points to limitations set out in paragraph A.1(d), (f), (h) and (i).
10. The appeal relates to a detached property which has a single storey, flat roofed, 'L' shaped projection to the rear which contains part of one lounge, the kitchen and a second lounge. The appellant states that the projection is part of the original dwellinghouse and thus for the purpose of measuring compliance with the limitations in Class A, the rear wall of the original dwelling house is the rear wall of the projection. The LPA on the other hand, says that the appellant has not demonstrated that is the case and therefore the rear wall of the original dwellinghouse for the purpose of Class A is the wall at the point at which the main pitched roof of the dwelling meets the rear of the property. On that basis, the LPA says that the proposed extension would fall within the limitations set out above. Nevertheless, the LPA accepts that, if the 'L' shaped projection is part of the original dwellinghouse, then the proposed development would not fall meet those limitations.
11. In LDC cases, the onus is on the appellant to demonstrate on the balance of probabilities that the proposed development is lawful. The appellant states that the existing building has not been previously extended and that the footprint of the existing house is unchanged.
12. The LPA states it has reviewed its own records and historical mapping information, neither of which it says conclusively proves whether the projection is original or not. However, it is evident that the projection is constructed in different materials to the original house. Moreover, the adjacent property, No 12, does not contain such a projection. One would reasonably expect it do so, as it is the same design as the appeal property which is indicative of it being built as a pair at the same time. Furthermore, the photographs appended to the submitted plans appear to depict a supporting beam across the ceiling of the lounge at the point of the property where the rear wall would have been if the projection is not original. To my mind, this is indicative of a supporting external wall having previously been present.
13. As a result, I find on the evidence before me, that on the balance of probabilities, the 'L' shaped projection to the rear of the property does not form part of the original dwellinghouse.

14. Paragraph A.1 sets out that development is not permitted by Class A if: (d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.
15. The proposed extension would involve the erection of a first floor above the existing rear projection. The extension would have a flat roof which would be at the same level as the ridge line of the main roof of the existing house. The existing eaves of the property are at ground floor level since the existing first floor rooms in the property are within the roof space. The proposed eaves would be at first floor level, just below the ridgeline of the roof. Consequently, the height of the eaves of the enlarged part of the dwellinghouse would exceed the height of the existing eaves. As a result, the proposal would fail to meet the limitation under paragraph A.1(d).
16. In addition, the extension would be within 2m of the boundary of the curtilage of the dwellinghouse. The submitted plans show the side wall of the house is less than 1m to the shared boundary. In addition, the eaves of the first floor enlargement would exceed 3m. As such, the proposal would fail to meet the limitation under paragraph A.1(i).
17. The LPA argue that, since the proposed extension would adjoin the existing ground floor projection, the proposal would fail to meet the limitations in paragraph A.1(f) and A.1(h). Paragraph A.1(ja) sets out the limitation that development is not permitted if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j) of A.1.
18. Paragraph A.1(f) states that development is not permitted by Class A if the enlarged part of the dwellinghouse would have a single storey and; (i) extends beyond the rear wall by more than 4m, and; (ii) exceeds 4m in height.
19. The proposed enlargement is at first floor level. Nevertheless, it adjoins the existing ground floor projection and therefore considering A.1(ja), I must consider the total enlargement. The ground floor projection extends more than 4m beyond the original rear wall of the dwelling. Likewise, the height of the proposed extension exceeds 4m. The submitted plans show the proposed roof level has a height of around 5.8m. Consequently, the proposal would fail to meet the limitation under paragraph A.1(f).
20. Paragraph A.1(h) states that development is not permitted by Class A if the enlarged part of the dwellinghouse would have more than single storey and; (i) extend beyond the original rear wall by more than 3m, or; (ii) be within 7m of any boundary of the curtilage which is opposite the rear wall of the dwellinghouse. As above, taking into account the total enlargement of the first floor addition above the adjoining ground floor projection, the extension would result in the enlarged part of the dwellinghouse extending more than 3m beyond the original rear wall. Thus, the proposal would fail to meet the limitation under paragraph A.1(h).
21. In addition to those limitations, the LPA states that the development would fail to adhere to the conditions set out in paragraph A.3(a) and (c). The conditions only apply if the proposal is permitted development under Class A and permission is granted by Article 3(1) of the GPDO. For the reasons set out above, the proposal would fail to meet several limitations under Class A and

would not therefore be permitted development. The conditions under paragraph A.3 do not therefore apply.

22. In conclusion, I have found that the proposal to extend the first floor of the property within the footprint of the existing building over part of an existing rear flat roof extension, would not be permitted development under Class A of Part 1, Schedule 2 of the GPDO as it would fail to meet the limitations under paragraph A.1(d), (h), (f) and (i). Consequently, at the date the LDC application was made, the proposed development would not have been granted planning permission by Article 3(1) of the GPDO. In the absence of evidence of any other planning permission for the development having been granted, I find that the proposal would have involved development without planning permission. Consequently, it would not have been lawful for the purposes of S191(2) of the Act at the date the LDC application was made.

Conclusion

23. For the reasons given above I conclude that the LPA's refusal to grant a certificate of lawful use or development in respect of the proposal to extend the first floor of the property within the footprint of the existing building over part of an existing rear flat roof 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.

J Whitfield

INSPECTOR