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# Appeal Decision

Site visit made on 20 November 2023

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 February 2024**

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**Appeal Ref: APP/U5930/X/23/3326190**

**7 Forest Drive, Woodford Green, Waltham Forest IG8 9NG**

- 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 (LDC).
  - The appeal is made by Mrs Claire Rees-Sewak against the decision of Waltham Forest London Borough Council.
  - The application ref 231160, dated 9 May 2023, was refused by notice dated 3 July 2023.
  - 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 a ground floor rear extension.
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## Preliminary Matters

1. The LDC application subject of this appeal was for proposed development. However, at the site visit I observed an extension in the location of the development proposed to the rear of the property. The dimensions of the existing extension may be similar to those of the proposed scheme. However, there are differences between the two. For example, the proposed scheme indicates that the cladding of the extension would be similar in appearance to the existing property and that its windows and doors would be 'as per existing'. The extension I observed on site does not accord with these specifications.
2. Indeed, it is worth noting that the materials to be used in any enlargements to a dwellinghouse are the subject of a condition imposed on the planning permission granted by Class A of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order).
3. The Council's decision on the LDC application and its approach to this appeal is based on the development as proposed and not on the scheme as constructed on site. My decision will do the same.
4. On a separate matter, the submitted plans show an extension to the width of the roof above the flat roof adjacent to 6 Forest Drive. This element is not referred to in the LDC application form and has not been considered by the Council. I will not, therefore, take this into account in my decision.

## Main Issue

5. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them 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; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.

6. It is the appellant's case that the proposed development would be permitted by Class A of Part 1, Article 3, Schedule 2 of the Order, hereafter referred to as Class A. Class A permits the enlargement, improvement or other alteration of a dwellinghouse. Criteria (a) to (l) of A.1. specify the type of development that would not be permitted by Class A. The Council's delegated report considers each of these criteria in turn, and suggests after each whether or not the development would be that specified. The LDC decision notice refers to criteria (f)(ii), (i) and (k)(i) of A.1. The dispute between the parties is whether or not the development proposed would accord with these criteria.
7. In reaching my decision in this case I have had regard to the MHCLG Technical Guidance on permitted development rights for householders. This includes advice on how to consider the criteria of the Order relevant in this case.

## **Reasons**

8. A.1.(f)(ii) of Class A states that development will not be permitted by Class A if, subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey exceeding 4 metres in height. A.1.(i) states that development will not be permitted by Class A if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.
9. The appeal site is occupied by a terraced house located on a linear shaped plot. The plot is steeply sloping, such that the dwellinghouse is significantly elevated above the rear garden. This is also the case for the other properties along this part of Forest Drive, where most have some sort of enclosed area directly adjacent to the rear of the dwelling, level with the ground floor, and a series of steps down into the rear garden. The existing plans and the photographs provided by the appellant show this very arrangement at the appeal site.
10. I observed that part of the level area, referred to by the appellant as a terrace, appears to remain on site to the side of the existing extension. I observed the concrete slab of the terrace and, beneath part of this, I observed two sections referred to as an 'outbuilding/store' on the plans.
11. The submitted plans show no change to the level of the terrace, and proposes a flat roof extension to sit upon part of the existing terrace. To that end, the enlargement proposed would only comprise development above the existing terrace. The development proposed does not include any alterations below the ground floor of the dwellinghouse. For this reason, I cannot agree with the Council that the development would consist of or include the construction or provision of a verandah, balcony or raised platform, as referred to in A.1.(k)(i) of Class A.
12. Notwithstanding this, the other dispute between the parties is that the height of the enlargement would exceed the limitations stated in both A.1.(f)(ii) and A.1.(i). The first refers to the height of the enlargement, whilst the second

refers to the height of the eaves of the enlarged part of the dwellinghouse. Either way, this makes little difference in the case before me. The enlargement proposed has a varied roof height comprising a stepped flat roof, where the central flat roof section would be higher than the flat roof sections either side. The plans show that there would be little in the way of eaves. As such, there would be little difference in the measurement of the height of the enlargement compared to the measurement of the height of the eaves of the enlarged part of the dwellinghouse.

13. The MHCLG Technical Guidance provides advice on how to measure height for the purposes of Part 1 Article 3, Schedule 2 of the Order. It says that 'references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level'. The dispute between the parties is where the measurement from ground level should be taken. In short, the Council suggest that it should be taken from the ground level at the base of the terrace, whereas the appellant suggests that it should be taken from the terrace.
14. The plans submitted with the LDC show that the development would adjoin the boundary between the appeal site and the property at 8 Forest Drive. As such, for the purposes of A.1.(i) of Class A, the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse. The plan showing the proposed rear elevation (drawing reference 0571-03-0550 rev.03) provides a measurement of 3 metres as the height of the enlargement closest to the adjoining property at No 8. The height of the eaves of the central section of the enlargement would, therefore, measure greater than 3 metres.
15. I acknowledge that the flat roof of this central section would mainly comprise glass panels, as a continuation of the glazing on the rear elevation. Nevertheless, the eaves of this part of the enlargement would be where these glazed roof panels meet the rear elevation glazing. The plans show that the eaves height measurement here would exceed 3 metres.
16. The MHCLG Technical Guidance makes clear that 'where any part of a proposed extension to a house is within 2 metres of the boundary of its curtilage, then **the maximum height of the eaves that is allowed for the proposal is 3 metres**' (my emphasis). Neither the Guidance nor the Order indicate that only the eaves of the enlarged part of the dwellinghouse that is closest to the boundary of the curtilage be taken into account. The ordinary reading of the Guidance as applied to this case (i.e. where an enlargement is proposed that would have eaves of varying heights) is that the maximum height of any of the eaves of the enlargement that is allowed is 3 metres.
17. For these reasons, even if I were to agree with the appellant on where the ground level measurement should be taken, the height of the eaves of the enlarged part would exceed 3 metres. Accordingly, the circumstances of A.1.(i) of Class A would apply. The proposed development would not, therefore, have been permitted by Class A if instituted or begun on the date the LDC application was made.
18. I have had regard to the examples of extensions to the rear of other properties along Forest Drive. The Council say that it has no record of the planning history for these developments. As such, I do not know whether the development is historic, whether permission has been granted for the

development, or the circumstances under which the development may have been permitted. I cannot, therefore, make an informed comparison with these cases and the proposed development that is before me. Their presence does not, therefore, alter my conclusions above.

### **Conclusion**

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a ground floor 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.

### **Formal Decision**

20. The appeal is dismissed.

*J Moss*

INSPECTOR