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# Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 21 February 2024**

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**Appeal Ref: APP/R5510/X/23/3315180**

**42 Greencroft Avenue, Ruislip HA4 9JJ**

- 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 Mr Dilan Patel against the decision of the Council of the London Borough of Hillingdon.
  - The application ref 30975/APP/2022/3278, dated 25 October 2022, was refused by notice dated 6 January 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 an open glass canopy with timber posts.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal can be determined without the need for a site visit, as I have been able to reach a decision based on the information already available.
3. Whether an LDC should be granted in respect of the proposal is strictly a matter of fact and law. Therefore, planning merits considerations are not before me in this appeal.

## Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that on the balance of probability, planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1.

## Reasons

5. The appeal property contains a single storey semi-detached dwelling. The dwelling has previously been enlarged, including at single storey level to the rear. The proposal entails erecting an open-sided canopy with a glazed flat roof supported by timber posts. The canopy would be situated at the rear of the dwelling, 0.5 metres beyond part of the rear-facing wall and adjoining a side-facing wall. It would have a depth of 4.3m, a width of 4.4m and an overall height of 2.6m.
6. Erecting the canopy would amount to a building operation, falling within the definition of development set out in s55 (1) of the 1990 Act. Planning permission is required for the carrying out of any development of land, having

regard to the 1990 Act at s57 (1). The GPDO at Article 3, Schedule 2, Part 1 grants planning permission for certain development which, as in the case of the proposal, is within the curtilage of a dwelling. This includes in Class E the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling as such, where all of the relevant limitations in paragraphs E.1 to E.4 are met. The appellant relied on this Class to explain why an LDC should be issued for the canopy.

7. To fall within Class E, any building would have to be freestanding. The Government's Technical Guidance<sup>1</sup>, which assists in interpreting the GPDO, makes it clear that a building attached to a dwelling is not permitted by Class E and is subject to the rules in Class A of Part 1. The submitted drawings indicate that the canopy would be joined to the existing side wall of the dwelling. Given the proximity to the side wall it is highly likely that the canopy uprights and/or the roof would be physically attached to the dwelling in some manner. Even if the submitted details had shown otherwise, any separation is likely to be so small that the canopy would still be viewed as an enlargement of the dwelling, as opposed to a freestanding structure. Additionally, there was no explanation provided by which it could be ascertained whether the canopy is required for a purpose incidental to the enjoyment of the dwelling as such. Therefore, based on the available evidence I am not persuaded that Class E grants planning permission for the canopy.
8. I turn now to assess the proposal against Class A, which grants planning permission for the enlargement, improvement or other alteration of a dwelling, subject to the relevant limitations and conditions in paragraphs A.1 to A.4 being met. There was no dispute that the proposal met most of the limitations relevant to a single storey enlargement in paragraph A.1 and that the only relevant condition in paragraph A.3 relating to the use of similar external materials is satisfied, whilst paragraphs A.2 and A.4 do not apply in this instance. I concur.
9. Nevertheless, for the proposal to be permitted by Class A, all the relevant size and locational limitations in paragraph A.1 must be met. Paragraph A.1 (f)(i) does not permit a single storey enlargement which would extend beyond the original rear wall of the dwelling by more than 3m. Similarly, paragraph A.1 (ja) does not permit development where the total enlargement (being the enlarged part together with any existing enlargement of the original dwelling to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j).
10. The previous enlargement protrudes beyond the rear wall of the original dwelling by more than 3m. The canopy would protrude a further 4.8m beyond the original rear wall. Accordingly, the proposal the limitation in Class A at paragraph A.1 (f)(i) is not met. In addition, it is highly likely that the part of the structure to which the canopy would be joined is itself a previous enlargement of the original dwelling, in which case the limitation at paragraph A.1 (ja) is also not met. The failure to meet the above limitations means that the proposal cannot be granted planning permission by Class A.
11. Therefore, on the balance of probability the appellant has been unable to show that planning permission is granted for the proposal by the GPDO at Article 3,

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<sup>1</sup> Permitted development rights for householders Technical Guidance MHCLG September 2019

Schedule 2, Part 1. It follows that in the absence of an express grant of planning permission, the proposal would not be lawful for planning purposes.

### **Conclusion**

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an open glass canopy with timber posts 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.

*Stephen Hawkins*

INSPECTOR