



Appeal Decision

Site visit made on 27 February 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/T5150/D/23/3328419

6 Oldborough Road, Brent, Wembley, HA0 3PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1 Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Wajahat Ali Khan against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/2404.
 - The development proposed is described as '*Single storey Rear extension in cooperate existing extension up to 6.0 M.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description in the banner heading above as it appears on the original application form. There is no evidence a change of description was agreed.
3. Under Article 3(1) and Schedule 2 (Part 1, Class A) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions.
4. Where an application is made for prior approval for development which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g) to Part 1, paragraph A.4(3) sets out that the local planning authority may refuse the application where it considers that the proposed development does not comply with the conditions, limitations or restrictions that are applicable to such permitted development.
5. From the information supplied and what I observed at my site visit, a canopy as shown on the existing plans had been built at the appeal property. From the evidence before me, the application site is currently subject to an open enforcement investigation (Council ref: E/23/0120) for the erection of extensions to the rear of the premises without the benefit of planning permission. The Council's officer report states these are shown on the plans associated with this application.

Main Issues

6. The main issue is whether the proposal would be permitted development.

Reasons

7. The host property is a semi-detached dwelling with an existing single storey rear extension. A polycarbonate sheet roof canopy extension is attached to it. This extends over a patio area alongside the joint boundary with 8 Oldborough Road.
8. The appellant has not provided any evidence that the extensions including the canopy benefits from planning permission, either by the granting of express planning permission or as a result of the provision of the GPDO or that the enforcement case has been closed.
9. Article 3 of the GPDO sets out that planning permission is granted for the forms of development at Schedule 2 of the GPDO. Paragraph 3(5) states that this permission does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Consequently, where there are unlawful elements to the existing building, the rights granted by Article 3 and Schedule 2 of the GPDO do not apply.
10. In this case the Council's evidence suggest the extensions to the rear are unlawful and this is not disputed by the appellant. Therefore the dwelling does not benefit from permitted development rights as set out in the GPDO. I acknowledge that the proposal explicitly includes the resizing of the construction on site of the unauthorised extension. However, at the time of this appeal decision, there would be no permitted development rights and therefore it is not possible to grant prior approval for these works at this time.
11. Furthermore, having regard to the appellant's additional evidence, prior approval cannot be granted for development that has already begun, whether or not it is wholly or partially completed or is to be resized. Paragraph A.4 (10)(b) to Part 1 states the development must not begin before the local planning authority provides written notice giving their prior approval.
12. I therefore conclude that the proposed extension is not permitted under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. The development cannot benefit from the permitted development rights given by Class A.

Other Matters

13. As the proposal does not constitute permitted development, I have no need to consider the amenity of adjoining premises or the other matters of prior approval. Planning permission is required for the proposal.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR