



Appeal Decision

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/B1930/X/22/3309913

Wolfsbane, North Orbital Road, London Colney, Hertfordshire AL4 0NF

- 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 Sinan Karacayli against the decision of St Albans City Council.
 - The application ref 5/2022/1729, dated 7 July 2022, was refused by notice dated 25 October 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 a proposed 2 storey rear extension of 3M with a single storey side extension plus internal alterations and amendments to window locations on the front elevation.
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Decision

1. The appeal is allowed insofar as it relates to the single storey side extension, internal alterations, and amendments to window locations on the front elevation and attached to this decision is a certificate of lawful use or development describing the proposed development which is found to be lawful.
2. The appeal is dismissed insofar as it relates to the 2 storey rear extension.

Procedural Matters

3. I have taken the description of the proposed development from the Council's decision notice as it provides a more concise description than that outlined on the application form.
4. In an appeal under s195 of the Act the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. Consequently, no site visit was made as it was not necessary for me to view the property in order to determine the appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether the development would be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order as amended (GPDO).

Reasons

6. The Council's single reason for refusing to grant the LDC is that the proposed two storey rear extension would fail to comply with the limitations set out at paragraph A.1(j) of the GPDO. No reference is made to the single storey side extension, internal alterations, or amendments to window locations on the front

elevation in the Officer's report or the decision notice. However, as they formed part of the application, I have considered them accordingly.

Two storey rear extension

7. Subject to limitations and conditions, Class A, Part 1 of Schedule 2 of the GPDO permits 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 paragraphs A.3 and A.4.
8. The appeal property is a two-storey detached dwelling with a two-storey flat roofed outrigger to the rear. The Council consider that the two-storey outrigger forms part of the original¹ house, which is not disputed by the appellant. The proposed development would see the existing outrigger demolished, and subsequently replaced with a two-storey rear extension spanning the width of the main part of dwelling. The basis of the appellant's case is that the proposal does not project beyond a side wall, and therefore falls within the parameters of permitted development.
9. Paragraph A.1(j) of the GPDO states that development is not permitted under Class A, if:

'the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse.'
10. The Technical Guidance² published by the Ministry of Housing, Communities and Local Government (2019) assists in interpreting householder permitted development rights set out in the GPDO. It explains that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls and the Technical Guidance provides example diagrams³ to clarify this position.
11. The Technical Guidance also informs that where an extension fills the area between a side elevation and a rear wall, the restrictions within the GPDO on extensions beyond rear walls and side walls will both apply.
12. In view of the above, it is clear that the side walls of the two-storey outrigger are walls forming a side elevation of the house for the purposes of the GPDO. Although the outrigger would be demolished as part of the proposed development, the GPDO does not make any exceptions for the demolition of part of the original dwelling. The proposed two-storey rear extension would clearly involve extending beyond the side walls of the outrigger, and therefore given its height and two-storey nature, it would fail to comply with the limitations set out on paragraph A.1(j) of the GPDO.

¹ "Original" means in relation to a building, other than a building which is Crown land, existing on 1 July 1948, as existing on that date, or if built on or after 1 July 1948 as so built – Article 2 of the GPDO.

² The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019.

³ Page 22.

Single storey side extension

13. The proposed drawings detail that the side extension would not exceed 4 metres in height, would be single storey, and would not have a width greater than half the width of the original dwellinghouse. It would therefore comply with the limitations set out in paragraph A.1(j) above.
14. I also find no conflict against any of the other limitations and conditions of Class A, Part 1 of Schedule 2 of the GPDO. Consequently, based on the evidence before me, the proposed single storey side extension accords fully with the provisions set out in Class A of the GPDO and is therefore permitted by that Class.

Internal alterations and amendments to window locations

15. Section 55 of the Act sets out the statutory definition of development. Section 55(2) provides that certain categories of operations do not amount to development. The list set out in s55(2)(a) includes "*the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of a building, or (ii) do not materially affect the external appearance of the building, ...*".
16. The proposed internal alterations to the existing building in this appeal would affect only the interior of the building. They therefore fall within the terms of section 55(2)(a)(i) and do not amount to development.
17. With regards to the amending of window locations on the front elevation, the proposal includes the five new window openings and the alteration of a further seven as well as the removal of a door. Due to the level of change that would occur to the front elevation, I consider that the proposal would materially affect the external appearance of the building. It would therefore amount to development under s55(2)(a)(ii).
18. Having established that the proposed amendments to windows on the front elevation would constitute development I turn next to the question of whether they would be permitted development.
19. Class A of the GPDO permits alterations to a dwellinghouse, subject to limitations and conditions set out at A.1 to A.4. The windows proposed on the front elevation, which are detailed on the submitted plans as being 'New UPVC windows to match existing', would not conflict against any of the limitations and conditions of Class A, Part 1 of Schedule 2 of the GPDO. I therefore find that the proposed windows to the front elevation would be permitted development and therefore lawful.

Other Matters

20. I understand that the appellant feels frustrated by the proposal being considered differently to what was expected, in light of previous decisions made by the Council. However, any previous discussions or decisions made by the Council on other applications are not matters that affect my findings on the main issue in this case.
21. As indicated in the procedural matters, the planning merits of any operations are not relevant in this LDC. Consequently, whether or not the proposed development is in proportion with the existing building, revitalises the building,

or is of appropriate design are not determinative factors in deciding if it is permitted.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed 2 storey rear extension was well founded and that the appeal fails in that regard. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
23. For the reasons given above I also conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed single storey side extension, internal alterations, and amendments to window locations on the front elevation was not well-founded and that the appeal succeeds in that regard. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

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 7 July 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed single storey side extension and amendments to window locations on the front elevation would satisfy the conditions and limitations of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and would therefore be permitted development.

The proposed internal alterations to the existing building would affect only the interior of the building. They therefore fall within the terms of section 55(2)(a)(i) and would not amount to development.

Signed

David Jones

Inspector

Date: 21 May 2024

Reference: APP/B1930/X/22/3309913

First Schedule

Single storey side extension, internal alterations, and amendments to window locations on the front elevation

Second Schedule

Land at Wolfsbane, North Orbital Road, London Colney, Hertfordshire AL4 0NF

IMPORTANT NOTES – SEE OVER

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 operations 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, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 May 2024

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Scale: Not to Scale

