



# Appeal Decision

Site visit made on 27 March 2024

**by J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

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

**Decision date: 22<sup>nd</sup> July 2024**

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**Appeal Ref: APP/T5150/X/23/3315480**

**61 Alder Grove, London NW2 7DE**

- 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 Akram Mageed against the decision of the Council of the London Borough of Brent.
  - The application ref 22/3763, dated 2 November 2022, was refused by notice dated 16 December 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 erection of rear out-building.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr Akram Mageed against the Council of the London Borough of Brent. This application is the subject of a separate decision.

## Preliminary Matters

3. The description of the proposed development set out on the Council's decision notice differs to that provided on the application form, and a different form of words is provided by the appellant on the appeal form. I have adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought, and thus it forms the basis of my determination.

## Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposed operations would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

## Reasons

5. In order for a LDC to be granted under section 192 of the Town and Country Planning Act 1990 (the 1990 Act), it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use or operations described would have been lawful at the time of application. Planning merits

form no part of the assessment for an application for a LDC, which is instead considered on the facts of the case and any relevant judicial authority.

6. The appeal property is a semi-detached two storey dwelling with accommodation in the roof space. The proposal involves the partial demolition of an existing single storey rear extension to create an outbuilding in the rear garden area.
7. Schedule 2 Part 1, Class E of the GPDO states that buildings etc incidental to the enjoyment of a dwellinghouse are permitted development, subject to various limitations and conditions. However, Article 3(5) of the GPDO states that the permission granted by Schedule 2 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.
8. The Council point out that the existing single storey rear extension does not benefit from planning permission and is, therefore, unlawful. The appellant does not dispute this and accepts that the existing single storey extension is unlawful.
9. Therefore, in the absence of evidence to the contrary, I also find the existing single storey extension to be unlawful. Therefore, Article 3(5) of the GPDO is engaged. Consequently, the appeal property cannot benefit from permitted development rights until such time as any lawfulness issues are resolved. It follows, therefore, that the permission granted by Schedule 2 would not apply to the proposal.

### **Other Matters**

10. The appellant makes much of the Council's queries over the lawful use of the appeal property, and whether a material change of use has occurred to that of a House in Multiple Occupation (HMO). Very little evidence has been provided to demonstrate this either way. In any case, the Courts have established that HMOs can benefit from permitted development rights. Nevertheless, this matter is not determinative in this case, and so it does not lead me away from my overall findings.

### **Conclusion**

11. The appellant has not demonstrated, on the balance of probabilities, that the proposed outbuilding would be permitted development, having regard to the relevant provisions of the GPDO. Therefore, in the absence of an express grant of planning permission it has not been demonstrated that the proposed development would be lawful.
12. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the erection of a rear outbuilding 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 M Tweddle*

INSPECTOR