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# Appeal Decision

Site visit made on 12 August 2024

**by K A Taylor MSC URP MRTPI**

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

**Decision date: 14<sup>th</sup> August 2024**

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**Appeal Ref: APP/G4240/X/24/3344100**

**4 Francis Street, Denton, Manchester M34 7GF**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("The Act") against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr David Crowther against the decision of Tameside Metropolitan Borough Council.
  - The application ref 24/00027/CPUD, dated 11 January 2024, was refused by notice dated 1 March 2024.
  - The application was made under section 192(1)(b) of the Act.
  - The development for which a certificate of lawful use or development is sought is small external porch.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is whether the Council's refusal to grant a LDC was well founded. This turns on whether the proposal 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) if begun on the date the application was made.

## Reasons

3. Section 192(2) of the Act indicates that if, on an application under that 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 shall refuse the application.
4. The decision is therefore based on the facts of the case and any relevant judicial authority. For the avoidance of doubt, this means that any planning merits are not relevant to this appeal, including parking and access. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful if begun on the date on which the application was made, that being 11 January 2024.
5. Article 3 and Schedule 2, Part 1, Class D of the GPDO permits the erection or construction of a porch outside any external door of a dwellinghouse subject to limitations. Development is not permitted by Class D.1 if '(d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway'.

6. The Householder Technical Guidance<sup>1</sup> defines the terms in the GPDO, whereas a highway is a public right of way such as a public road, public footpath and bridleway. The GPDO sets out the interpretation of a highway for the purposes of Part 1, which includes an unadopted street<sup>2</sup> or a private way.
7. The appeal site relates to a mid-terrace property sited directly along Francis Street which is an unadopted highway with both vehicle and pedestrian access to the terraced properties. It is an unmade road with a hardstanding surface which connects with Henry Street. The front of the appeal property is not enclosed and does not benefit from any front garden, however directly outside the front entrance is an area consisting of connecting concrete blocks and/or paving slabs that continue along on one side of the frontage of the properties. It appears from the evidence before me, this is a pavement that people could walk on.
8. The proposed development is to construct a porch with a lean-to roof which would project from the front wall onto the paved area and incorporate a new exit from the house via the existing front external door.
9. Plans which have been submitted as part of the application indicate that the proposed porch would project some 910mm from the existing front wall of the property and have a width of some 1.6m with an overall height not exceeding 3m. The plans indicate the porch would be sited on the paved area resulting in it being sited within 2m of the highway. Even if, I considered the contention that the paved areas do not form part of the highway the proposed porch would still be sited within 2m of the unadopted highway as the distance would only be some 1.4m. This means the structure would be within 2m of the boundary of the curtilage of the dwellinghouse and the highway, thus not according with paragraph D.1 (d).
10. I have been referred to a neighbouring fence that has been erected on the pavement outside the front of No.2. However, whether it complies with any provisions or limitations of the GPDO is outside the scope of this LDC application.
11. Therefore, in the particular circumstances of this case, it has not been demonstrated that the proposal would comply with the limitation set out in paragraph D.1 (d) of Schedule 2, Part 1, Class D of the GPDO.

## **Conclusion**

12. The appellant has not demonstrated, on the balance of probabilities, that the proposed development 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 have been lawful if begun on the date the application was made.
13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a small external porch 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).

*KA Taylor*

INSPECTOR

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

<sup>2</sup> An unadopted street means a street not being a highway maintainable at the public expense within the meaning of the Highways Act 1990.