



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/G3110/X/23/3329471

32 Field Avenue, Oxford OX4 6PL

- 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 John Elo against the decision of Oxford City Council.
 - The application ref 23/01525/CPU, dated 5 July 2023, was refused by notice dated 17 August 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 '*single storey side extension that is less than the width of the original building.*'
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Decision

1. The appeal is dismissed.

Preliminary Matter

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.

Main Issue

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

Reasons

4. The onus is firmly on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a modern, two storey end of terrace dwelling. The dwelling occupies a corner plot. The principal elevation of the dwelling faces towards a local distributor road, the side elevation facing towards a residential cul-de-sac. An area of private garden is between the side elevation and a wall adjacent to the property boundary. Immediately next to the boundary is a footway forming part of the cul-de-sac.
6. The proposal entails erecting a single storey extension at the side of the dwelling, to create an enlarged dining room and lounge. Erecting the extension would be a building operation, falling within the definition of development set out in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to the Act at s57(1).
7. At Article 3, Schedule 2, Part 1, Class A, the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwelling. This is subject to the size and locational limitations in paragraphs A.1 and A.2 and the conditions in paragraphs A.3 and A.4 being met, where relevant.

8. Paragraph A.1(e)(ii) of Class A does not permit an enlargement beyond a wall which fronts a highway and forms a side elevation of the original dwelling. The Government's Technical Guidance (TG)¹, which assists in interpreting the GPDO, contains a diagram illustrating where a side elevation fronts a highway. By way of further explanation, the TG states that the extent to which an elevation fronts a highway will depend on factors including the angle between the elevation of the dwelling and the highway as well as the distance between the dwelling and the highway. If the angle is more than 45 degrees the elevation will not normally be considered as fronting a highway. Where the distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the dwelling and the highway.
9. The appellant's case is that the side elevation of the dwelling does not front a highway. There is no dispute however that the cul-de-sac is a highway. The relationship between the side elevation of the dwelling and the highway is very similar to the illustration in the TG. The angle in relation to the highway is less than 45 degrees. Being around 4.5m from the property boundary, the side elevation cannot be described as being a substantial distance from the highway. There is no intervening land in different ownership or use between the boundary wall and the highway. Accordingly, in the particular circumstances of this case, as a matter of fact and degree, the side elevation of the dwelling fronts a highway. There is no firm evidence which might suggest otherwise. It follows that the proposal would not meet the limitation in paragraph A.1(e)(ii).
10. It is not in dispute that the proposal meets the other limitations relevant to a single storey enlargement in paragraph A.1 and that the relevant condition in paragraph A.3 relating to the use of similar external materials is met, whilst paragraphs A.2 and A.4 do not apply. Nevertheless, for the proposal to be permitted by Class A all the relevant size and locational limitations in paragraph A.1 must be met. Development which fails to meet any of the relevant limitations in Class A is entirely without planning permission.
11. Consequently, the appellant has been unable to show that planning permission is granted for the proposal by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of an express grant of planning permission, the proposal would not be lawful for planning purposes. It is open to the appellant to make the necessary planning application, a decision on which rests with the Council in the first instance.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a single storey side extension 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

¹ Permitted development rights for householders: Technical Guidance MCHLG September 2019