



Appeal Decision

Site visit made on 3 December 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/H5960/X/24/3341423

76 Norroy Road, Wandsworth, London SW15 1PG

- 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 Ti Chen against the decision of the Council of the London Borough of Wandsworth.
- The application ref 2024/0220, dated 23 January 2024, was refused by notice dated 19 March 2024.
- 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 second floor rear extension to create an additional bedroom similar to that of 48 Norroy Road, which was approved under application 2014/4128.

Decision

1. The appeal is dismissed.

Main Issue

2. There is no dispute that the proposed development would accord with the provisions of Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ("the GPDO"). I have no reason to disagree. Nevertheless, the main issue is whether the Council's refusal to grant a certificate of lawful use or development in was well-founded, having regard to whether the property was a dwellinghouse.

Reasons

3. An application under s192(1) of the Act seeks to establish whether any use or operations proposed to be carried out in, on, over, or under land would be lawful. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. The GPDO confirms what is meant by the term 'dwellinghouse'. Except for Parts 3, 12A, and 20 of Schedule 2 of the GPDO, its meaning does not include a building containing one or more flats or a flat contained within such a building. Parts 3, 12A, and 20 are not applicable in this case.
5. The Technical Guidance permitted development rights for householders explains that a 'dwellinghouse' does not include buildings containing one or more flats or a single flat contained within a building.
6. In *Gravesham BC v SSE & O'Brien [1983] JPL 306* it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The property must be a 'dwellinghouse' having regard to Gravesham, be 'substantially completed' as such, have a curtilage, and be in use as a 'dwellinghouse' as a matter of fact and degree for Part 1 of the GPDO to apply.

7. The term 'substantially completed' must be taken as having the meaning established by *Lord Hobhouse in Sage v SSETR & Maidstone BC [2003] UKHL 22*: in the case of building operations, what is required is 'a fully detailed building of a certain character'. This means that the whole of the development needs to be fully carried out internally and externally.
8. Prior to the appellant's purchase of the property on 8 December 2023, flats occupied the property. The appellant says that on 20 December 2023, they implemented a planning permission granted on 3 October 2022 (Ref: 2022/3049). This permission was for "alterations including erection of single-storey rear/side extension and extension above two-storey back addition in connection with use as a single dwelling." After taking ownership of the property, the appellant removed the doors to the flats and the first partition wall on the ground floor. The appellant states that the property was used as a single dwellinghouse containing no flats when the LDC was made.
9. Photographs provided by both parties show works being carried out to the inside of the property. The Council's photographs, taken on 29 February 2024, which is after the LDC was submitted, show that the works to the inside of the property are not substantially complete. This is also corroborated by the appellant's photographs, which are said to have been taken on 16 and 31 January 2024, either side of when the LDC was submitted. The earlier of these images shows the kitchen stripped out. This would be a facility required by occupants for day-to-day private domestic existence. There is no substantive evidence to indicate that an equipped and functional kitchen was present in the property on the day the LDC was submitted. It is also unclear whether the property had bathroom and sleeping facilities also, based on the photographs.
10. The photographs also show that, at least in some parts of the property, the internal walls were not complete, there were no ceilings or internal finishes, and there were no internal doors.
11. The property is said to have been acquired as a single dwelling on one title deed, and multiple dwellings relief for Stamp Duty Land Tax (SDLT) was not sought, and a saving was not made on SDLT. Further, the Council's Council Tax records are said to have been updated in early December to reflect a use as a single dwellinghouse, and energy bills for a month prior to and a month after the LDC may show a single address. However, on the balance of probabilities, the appellant has not demonstrated that the works to the property to implement its use as a single dwelling were substantially complete when the LDC was submitted. Further, while works were ongoing, the property did not have the distinctive characteristics of a dwellinghouse when the LDC was submitted and was not used as such. It follows that the property was not a 'dwellinghouse' for the purposes of the GPDO when the LDC was submitted.
12. I therefore conclude that, on the balance of probability, the appellant has not shown that the property was a dwellinghouse when the LDC was submitted, and for this reason the second-floor rear extension would not accord with the provisions of Class B, Part 1, Schedule 2 of the GPDO.

Other Matter

13. I understand the Council has sent correspondence to the appellant concerning works at the property, but that no enforcement notice has been issued while this appeal is ongoing. I note that position but have determined this appeal on its own merits.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a second-floor rear extension to create an additional bedroom similar to that of 48 Norroy Road, which was approved under application 2014/4128 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).

Andrew McGlone

INSPECTOR