



Appeal Decision

Site visit made on 13 December 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

Appeal Ref: APP/N1920/X/24/3344724

22 Birch Grove, Potters Bar, EN6 1SY

- 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 Miss Julia Leonida against the decision of Hertsmere Borough Council.
 - The application, Ref 23/1776/CLE, dated 19 December 2023, was refused by notice dated 12 February 2024.
 - The application was made under section 191(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 described as: *"Existing rear extension, used to facilitate kitchen / dining area. Extension is to the rear of the property, which follows all the rules under permitted development."*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have dealt with another appeal on the same site, Ref APP/N1920/C/24/3345432.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

4. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations.
5. Section 191(2) of the same Act states that for the purposes of this Act operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the operations described in the application, or that description as modified by the local planning authority or a description substituted

by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

7. In a lawful development certificate appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. As set out in Planning Practice Guidance (PPG), the applicant is responsible for providing sufficient information to support an LDC application (see paragraph: 006 Reference ID: 17c-006-20140306).
8. An application needs to describe precisely what is being applied for. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate (see PPG paragraph: 005 Reference ID: 17c-005-20140306).
9. The PPG is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application (see paragraph: 009 Reference ID: 17c-009-20140306). So I cannot take any comments on planning merits into account in this decision. This includes works carried out on other properties.
10. According to the appellant, the rear extension is 'permitted development'. So for the purposes of section 191(2) of the 1990 Act, the appellant's case is that the extension did not require planning permission. Therefore, I have had regard to The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order').
11. Subject to conditions and limitations, the Order grants planning permission for specified forms of development. Schedule 2, Part 1, Class A of the Order concerns the enlargement, improvement or other alteration of a dwellinghouse.
12. Paragraph A.1.(d) of Schedule 2, Part 1, Class A of the Order states that development is not permitted by Class A if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.
13. Based on my observations at my site visit, the height of the eaves of the rear extension which has been built, exceeds the height of the eaves of the existing dwellinghouse and so paragraph A.1.(d) of Schedule 2, Part 1, Class A of the Order has not been complied with. Nothing has been provided to lead me to a different conclusion.
14. The drawings provided by the appellant, which the Council's decision was based on, do not match that which has been built on site, at least in respect of the height of the roof of the extension. The drawings suggest that the eaves of the rear extension are lower than the eaves of the existing dwellinghouse. Yet this is not what exists on site, bearing in mind that this is an LDC application made under section 191 (existing development) of the 1990 Act and not section 192 (proposed development).
15. If I were wrong about the eaves height then, because what has been built on site does not match the drawings, the application does not describe precisely what is being applied for and this would not accord with the PPG.
16. Paragraph A.1.(f) of Schedule 2, Part 1, Class A of the Order states that development is not permitted by Class A if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original

dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse.

17. The dwellinghouse is semi-detached and based on my observations at my site visit, it is obvious that the rear extension is more than 3 metres deep. So paragraph A.1.(f) of Schedule 2, Part 1, Class A of the Order has not been complied with.
18. Paragraph A.3.(a) of Schedule 2, Part 1, Class A of the Order states that development is permitted by Class A subject to conditions which include that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
19. The dwellinghouse is constructed of brick and the rear extension is faced in render. So the materials used in the exterior work are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and so paragraph A.3.(a) of Schedule 2, Part 1, Class A of the Order has not been complied with.

Other Matters

20. My attention has been drawn to correspondence between the Council and the appellant and concerns about the way in which the Council has dealt with applications on the appeal site. But these are not relevant to whether the rear extension is lawful or not for the purposes of the Order and so these concerns make no difference to my conclusion in this case.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: *"Existing rear extension, used to facilitate kitchen / dining area. Extension is to the rear of the property, which follows all the rules under permitted development,"* 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.

L Perkins

INSPECTOR