



Appeal Decision

No Site Visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 FEBRUARY 2025

Appeal Ref: APP/P5870/X/23/3323167

118 Collingwood Road, Sutton SM1 2RB

- 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 and Mrs Baljit and Indu Sood against the decision of the Council of the London Borough of Sutton.
 - The application ref DM2023/00039, dated 8 January 2023, was refused by notice dated 22 February 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 a new single storey rear extension and a new dormer to the rear of the main roof.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. I have based my decision on the evidence submitted with the appeal as part of the written representation procedure. The main parties were made aware of this fact, and no objections were made regarding the appeal being determined without a site visit.
3. For a Lawful Development Certificate (LDC) to be granted under section 192 of the Town and Country Planning Act 1990 (1990 Act) it is necessary for the appellants to demonstrate, on a balance of probabilities, that the development would have been lawful on the date of the application. The relevant date for determining whether the development subject of the appeal would be lawful is the date the application was submitted to the Council, which in this case is 8 January 2023.
4. The development proposes a single storey rear extension and a dormer to the rear roof plane. Existing and proposed front and rear elevation plans, as well as section plans, and a site plan have been submitted. An Appeal Statement, final comments and some photographs of the rear of the property have also been included with the appeal. The plans supplied with the application show a flat roofed rear dormer and rooflights to the front roof plane. The flat roof ground floor kitchen extension adjoins to the existing kitchen and bathroom projections and marginally increases the roof height.
5. Matters such as planning policies and the effect of the proposed dormer and extension on the character and appearance of the area and neighbour's living

conditions are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

6. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

7. The application was made under section 192(1)(b) of the 1990 Act, which relates to proposed development in the form of operations.
8. There is no dispute between the parties that the proposed rear dormer would be compliant with the requirements set out in Article 3, Schedule 2, Part 1, Class B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015. ('the Order'). The main area of contention is whether the rear single storey extension, combined with existing enlargements, extend more than 3 metres beyond the rear elevation of the original dwelling in compliance with paragraph (f)(i) of Schedule 2, Part 1, Class A (Class A) of the Order.
9. In making their assessment, the Council regarded the existing kitchen and bathroom as enlargements to the original dwelling. When combined, the Council determined that the extensions would extend more than 3 metres beyond the original two storey rear elevation of the dwelling. However, the appellants indicate that a historical map, dated 1954, shows that the rear single storey projections formed part of the original dwelling. The appellants state that the rear projections extended as far as the existing kitchen, and the staggered depth of the combined extensions would comply with paragraph (f)(i) Class A of the Order.
10. I have had regard to the appellants' position and acknowledge that a staggered rear elevation on historical terraced properties is not unusual. However, the appellants have not provided the historical map, and I am relying upon their interpretation of the plan with no point of reference. Furthermore, based on the evidence before me, the enlargements and alterations at neighbouring properties along the rear of the terrace block are varied in nature, making it difficult to make an accurate comparison between the appeal site and any unaltered neighbouring dwelling.
11. In my judgement, the evidence provided to me is imprecise and ambiguous when demonstrating that the original rear additions extended as far as the existing kitchen. Without these details I have no solid evidential basis to determine whether the combined extensions would be compliant with paragraph (f)(i) of Part 1, Class A of the Order. Accordingly, the appellants have not discharged the required burden of proof and have failed, on the balance of probability, to show that the proposed extensions would have been lawful on the date of the application.

Other Matters

12. I acknowledge that similar additions have been built at neighbouring properties, but I have not been provided with the details of these cases to compare. However, as indicated in the preliminary matters, the planning merits of any operations are not relevant in an LDC. Consequently, whether the development is not harmful to the character and appearance of the area, or it is similar to other extended properties, is not a factor in determining whether it is permitted development.

Conclusion

13. While I agree with the Council's decision to refuse to issue an LDC, having regard to the available evidence, my decision is made on a different basis. As with all LDC applications, it is open for fresh applications to be made if, for example, greater detail or other evidence comes to light to allow an accurate assessment on the proposed development.
14. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of a new single storey rear extension and a new dormer to the rear of the main roof, that refusal would have been 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).

M. P. Howell

INSPECTOR