



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/23/3323019

38, The Highway, Sutton SM2 5QT

- 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 Martyn Gibbons against the decision of the Council of the London Borough of Sutton.
 - The application ref DM2023/00118, dated 24 January 2023, was refused by notice dated 3 April 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 the erection of a single storey rear extension and a first floor side extension.
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Decision

1. The appeal is dismissed.

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. I have taken the description of development from the Council's Decision Notice as it provides a more concise description than that outlined on the original application form. As the amended description is consistent with that outlined on the Appeal Form, I am satisfied that there would be no prejudice in this respect.
4. The Lawful Development Certificate (LDC) seeks to establish whether the development of a single storey rear flat roofed extension and a first floor side extension 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 is the 24 January 2023.
5. For an LDC to be granted under section 192 of the Town and Country Planning Act 1990 (1990 Act) the appellant must demonstrate, on the balance of probability, that the development would have been lawful. Matters such as planning policies and the effect of the proposed development on the character and appearance of the area and neighbour's living conditions are irrelevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
6. The appellants have submitted existing and proposed elevations, floor plans, roof plans, and section plans together with a site location plan. The appeal site is also

subject to planning history, which is relevant to the determination of the appeal. The appellant has indicated that extensions approved in 1976 and 1988¹ were not implemented, but an infill side extension and the formation of a double garage approved in 2007² were carried out on site. (I will hereafter refer to this as the 2007 permission).

Main Issue

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

Reasons

8. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
a) No enforcement action may 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 enforcement notice then in force.
9. The appellant has provided plans submitted with the 2007 permission. Aside from the garage close to the side boundary being an addition in the 1960s, the appellant indicates the existing plans show the dwelling as originally built. The Council has not disputed this or provided any evidence to the contrary. As such, I have determined the appeal on the basis that the existing plans for the 2007 permission (minus one of the two garages) are an accurate depiction of the original dwellinghouse.
10. The original dwelling was a two-storey detached dwelling, set within a spacious plot. It is finished in brick and hanging brown tile. It is wider at ground floor with a breakfast room, setback from the principal elevation and linking the property to the single storey garage. The 2007 permission granted an infill extension at ground floor to the front of the breakfast room, linking the original side elevation with the garage. The two single garages were also altered to form a double garage with a hipped roof.
11. It is acknowledged that neither of the proposed extensions would extend beyond the most eastern side wall of the original dwelling. Nonetheless, the 'Permitted Development Rights for Householders: Technical Guidance indicates that "a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls." With this in mind, the side wall of the original two storey section of the dwelling must be regarded as a side wall of the original dwellinghouse. Therefore, any extension beyond that side wall should be assessed against Schedule 2, Part 1, Class A (j) of the GPDO.
12. Based on the evidence before me, the first-floor side extension would be joined to the ground floor infill extension granted via the 2007 permission, and on its own would extend beyond the two storey side wall of the original dwelling. Consequently, the proposed first floor side extension would be subject to the requirements set out in Schedule 2, Part 1, Class A (ja) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In accordance with Part 1, Class A (ja) of the GPDO, the first floor extension in combination with the previous additions would need to be assessed against Schedule 2, Part 1, Class A (j) of the GPDO.

¹ Council reference 76/15534 and 88/32362

² Council reference B2007/57433

13. The rear ground floor extension does not join to any previous enlargements, but it would also extend beyond the same two storey side wall of the original dwelling house. For this reason, the rear extension would also need to be assessed against Schedule 2, Part 1, Class A (j) of the GPDO.
14. As the proposed first floor extension would extend beyond a wall forming a side elevation of the original dwellinghouse, exceed 4 metres in height and have more than a single storey then it would not comply with the requirements of Schedule 2, Part 1, Class A (j)(i) and (ii) of the GPDO. The proposed rear extension does not exceed 4m in height and comprises a single storey, but the width would be greater than half the width of the original dwellinghouse. The rear extension would, therefore, fail to comply with Schedule 2, Part 1, Class A (j) (iii) of the GPDO.
15. As such, the proposed extensions would extend beyond a side wall of the original dwellinghouse and fail to comply with the requirements and limitations set out in Schedule 2, Part 1, Class A (j) of the GPDO.

Conclusion

16. For the reasons given above, I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the erection of a single storey rear extension and a first floor side extension that refusal would have been well founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR