



Appeal Decision

Site visit made on 21 January 2025

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

an Inspector appointed by the Secretary of State

Decision date: 27 FEBRUARY 2025

Appeal Ref: APP/P5870/X/24/3349521

27 Gilhams Avenue, Sutton, Banstead SM7 1QL

- 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 Andrew Harris against the decision of the Council of the London Borough of Sutton.
 - The application ref DM2024/00726, dated 22 May 2024, was refused by notice dated 17 July 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 the construction of a garden office.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. For an LDC to be granted under section 192 of the Town and Country Planning Act 1990 (1990 Act) it is necessary for the appellant to demonstrate, on the balance of probability, that the proposed development would have been lawful on the date of the application. The relevant date for determining whether the construction of the garden office would have been lawful is 22 May 2024. Matters such as planning policies and the effect of the proposal on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
3. The appellant has submitted a site location plan, site block plan as well as floor and elevation plans of the garden office. The plans show the proposed building as being to the southeast of the main dwellinghouse. During my visit, it was noted that a series of small walls are situated in an area where the outbuilding is proposed. However, notwithstanding what works have been carried out on site, my determination of the appeal has been based on the drawings submitted with the application for the proposed garden office under section 192 of the 1990 Act.
4. The appellant has included an Appeal Statement, where it is stated that 'The Government's Householder PD Technical Guidance says that the principal elevation is determined by eight indicators.' The eight indicators are said to be architectural detailing, window openings, relationship to the public highway, architectural detailing and layout of adjoining properties and other properties in the street, original layout and orientation of the curtilage, layout of the property, width of the elevations and boundary treatments.

5. I have had regard to the eight indicators highlighted by the appellant and the details of his submissions when coming to my decision. However, the Permitted Development Rights for Householders Technical Guidance for England 2019 (Technical Guidance) does not detail these eight indicators. I am aware that the Permitted Development Rights Technical Guidance for Wales lists these as factors to be considered when identifying the principal elevation. However, as permitted development rights differ in Wales, I cannot give any weight to its guidance when making my determination.

Main Issue

6. The main issue is whether the Council's refusal to issue a certificate of lawfulness in respect of the construction of the proposed garden office was well-founded.

Reasons

7. In an application for an LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: (i) 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 (ii) They do not constitute a contravention of any enforcement notice then in force.
8. I have not been made aware of an enforcement notice being in force on the land. As such, the main issue turns on whether the proposed building would benefit from planning permission for outbuildings and other structures incidental to the enjoyment of a dwellinghouse granted by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order").
9. The parties do not dispute that the building would be incidental and that its size would be reasonably required for its purpose. In the LDC application, the Council determined that it would meet all conditions and limitations other than the limitation at E.1(c). However, in their appeal submissions, the Council has also indicated that the proposal does not include a dual pitched roof and is contrary to the limitations set out in E.1(e)(i) and (iii) of the Order. For clarity, Class E.1(c) and (e)(i) and (iii) state that development is not permitted if –

(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse; and

(e)(i) the height of the building, enclosure or container would exceed 4 metres in the case of a building with a dual-pitched roof or (iii) 3 metres in any other case.

Principal Elevation

10. The Technical Guidance defines the 'principal elevation', in most cases, as "that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation".

11. The term “original” in relation to a building is defined in Article 2 of the Order to mean the building “as existing” on 1 July 1948, or, if built on or after that date “as so built”. The Council and the appellant have produced historical floor plans of the property. Also, a photograph of the front of the dwelling has been provided with the appellant’s submissions, which shows the dwelling before several alterations and extensions were carried out in recent years. I have determined the appeal on the basis that the floor plans and the photograph of the front of the property are an accurate depiction of the original dwellinghouse. The appellant has made the case for the front wall of the east wing (southwest elevation) being the principal elevation.
12. Based on the evidence provided, the original dwellinghouse was a two-storey, hipped-roof residential property with white UPVC windows and a timber door. The dwelling is L-shaped with a small projecting corner elevation, where the southeast and southwest elevations meet. There was a lawned area in the front with a central bricked pathway leading to the doorway in the corner elevation. The dwelling sits in a very spacious plot with a large private garden. The dwelling is set back from, and at an angle with a small turning circle at the end of Gilhams Avenue.
13. I acknowledge that in many cases, dwellinghouses will have principal elevations consistent with the indicators set out in the guidance. However, the dwellinghouse in this case does not fall neatly into the category of ‘most cases’. For example, the dwelling is set back from the adjoining highway and has no front wall facing (directly or at an angle) towards Gilhams Avenue. The opposing front walls of the two wings are similar in width, they have a similar number of window openings and neither includes the entrance. Furthermore, in my judgement, the original layout and orientation of the property shown on the floor plans, as well as the size and privacy in the rear garden area, do not provide a strong indicator either way.
14. Notwithstanding the above, the Technical Guidance does include helpful direction when determining the principal elevation on a building that is L-shaped or includes forward projections. In these cases, it states that more than one wall facing the same direction will be the principal elevation. In this context, it is evident that the southeast elevation would not just include the front wall of the west wing but also the end wall of the east wing. Conversely, the southwest elevation would be formed by the front wall of the east wing and the end wall of the west wing. The Technical Guidance goes on to state that all such walls will be considered to form the principal elevation, and the line for determining what constitutes ‘extends beyond a wall’ will follow these walls.
15. With the above in mind, and based on what I saw, the front wall of the west wing is similar in width and depth to the opposing front wall of the east wing. However, as the west wing is taller, the southeast elevation appears as the main or dominant elevation. Furthermore, the end wall of the east wing is prominent from views on the highway and includes a low sloping roof with an eyebrow dormer. The sloping roof and eyebrow dormer are one of the main architectural features of the dwelling. The ‘eyebrow’ style dormer is also a feature that is repeated on several front roof planes of neighbouring properties. For these reasons, I conclude that the southeast elevation is the principal elevation of the dwelling, comprised of the front wall of the west wing and the end wall of the east wing.
16. I appreciate that the front wall of the east wing has more window openings and includes a prominent chimney stack feature. However, the window openings on the ground floor are small and are not main bay windows. The lower height of the east wing also infers its secondary or subservient nature. Furthermore, in my judgement,

the chimney stack is not the main architectural feature of the dwelling or one I would generally associate with a principal elevation. This is compounded by the fact that the end wall of the west wing is also quite plain with two small first floor windows, which are distinctive characteristics of a side wall.

17. I have had regard to whether the garden area to the back of the east wing is larger and more private. However, from the evidence submitted, it is not clear what areas the appellant considered when coming to this conclusion. Furthermore, as already indicated, the garden areas were both large, spacious and private, which does not provide a strong indicator either way.
18. Consequently, in my judgement, the proposed garden office would be forward of the southeastern walls that comprise the principal elevation. I had regard to whether the principal elevation could be a 'cranked elevation', but the Technical Guidance clearly states that when there are two elevations, a view would need to be taken as to which of them is the principal. In any event, even if 'cranked', as suggested, the proposed garden room would be to the side of the southeast elevation, but it would still be on land forward of it. As such, it would not alter my conclusions on the matter.
19. The proposed garden office would, therefore, be contrary to Schedule 2, Part 1, Class E (c) of the Order.

Roof Design and Height

20. The Technical Guidance indicates that the height limit on a 'dual-pitched roof' of 4 metres should also be applied to buildings that have 'hipped' roofs (slopes on all four sides).¹ Despite a proportion of the roof having a flat area, the proposed roof is a hipped or truncated hipped roof, which would be below 4m.
21. Accordingly, the development would comply with Schedule 2, Part 1, Class E (e)(i) of the Order.

Other Matters

22. The appellant has highlighted two appeals they considered relevant to the determination of this appeal¹. However, I was not provided with the full details of these cases, so it is difficult to directly compare. In this respect, it is likely that the proposed developments, circumstances, and other physical factors in those cases are not the same as the appeal before me. I have therefore taken them into account as they provide useful information, but each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I have taken here.
23. I have had regard to the appellant's concerns about how the Council generally handled the LDC application as well as failing to submit the appeal documents in a timely manner. Based on the evidence before me, the questionnaire and the statement of case were submitted promptly as part of the appeal process and sent to the appellant's agent on 2 January 2025. Furthermore, if the appellant considered that the Council acted unreasonably in their approach, there are separate procedures for dealing with procedural matters, such as cost applications and complaints to the Council. However, these are not matters that would alter my conclusions.

¹ Appeal reference APP/L3245/X/22/3300401 and APP/R4408/D/21/3268165

Conclusion

24. While I agree with the Council's decision to refuse to issue an LDC, having regard to the available evidence, the reasoning of 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 further evidence comes to light.
25. 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 construction of a garden office 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