



Appeal Decision

Site visit made on 4 March 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/G5180/X/23/3320494

West Lodge, St Michaels, School Road, Chislehurst BR7 5PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Edwards against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/04340/PLUD, dated 02 November 2022, was refused by notice dated 27 March 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - 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 outbuilding incidental to the enjoyment of the dwellinghouse.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed outbuilding would be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

4. The appeal relates to West Lodge, a two-storey semi-detached dwelling. The dwelling was created following the subdivision of the original building known as

St Michaels, built in the C19 and was formerly used as St. Michaels Orphanage as well as The Old Poor House. It was converted into two residential dwellings in 1981, known as St. Michaels and West Lodge. The site lies within the Chislehurst Conservation Area and the building is locally listed.

5. The appellant seeks to establish that the proposed outbuilding would be granted permission by virtue of Class E of Schedule 2, Part 1 of the GPDO. Subject to limitations, Class E permits *"buildings etc incidental to the enjoyment of a dwellinghouse."*
6. The Council determined that the proposed outbuilding fails to meet Part E.3 of Schedule 2, Part 1, Class E of the GPDO. Part E.3 states that in the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.
7. Article 2 Interpretation (1) of the GPDO defines Article 2(3) land as National Parks, areas of outstanding natural beauty (AONB) and conservation areas etc. The appeal property is located within the Chislehurst Conservation Area and is thus Article 2(3) land.
8. Therefore, the appeal turns on what the original principal elevation is. The Council consider that the west elevation, which faces towards the common to be the principal elevation. This is primarily due to the presence of the main entrance, front door and porch on this elevation and the presence of architectural features such as bay windows. In contrast the appellant states that the south elevation which faces towards the school, and at an angle to School Road is the principal elevation. The burden of proof in this matter lies with the appellant.
9. The Government's Technical Guidance (TG)¹ provides a useful guide to interpretation of the GPDO. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for "principal elevation" it states:

"In most cases the principal elevation will be 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."
10. The TG described Highway as *"a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order it also includes unadopted streets or private ways."*

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019.

11. The above guidance makes clear that in “most cases” the principal elevation will be elevation fronting the main highway but also allows for scenarios where this is not the case. It is therefore a matter of planning judgement based on the particular facts of the case.
12. Despite not facing towards the highway, the western elevation, which faces towards the common, provides access to the dwelling and the front garden and includes the front porch and main entrance into the property. This serves the central hallway where all other living areas are accessed. Whilst there are front gables on the southern elevation, the western elevation contains the most architectural features, which comprise the tallest, decorative front gable with a tall chimney stack rising from the gable and contains a bay window at first floor level. There are also two other bay windows on this elevation, and the ground floor contains three evenly spaced large sash windows, serving the main living room.
13. On balance, and as a matter of fact and degree, despite the south elevation broadly facing towards the highway, I consider that the west elevation containing the main front door of the property, being the elevation approached when entering the dwelling, and containing the most prominent and attractive architectural features is the principal elevation.
14. I appreciate that West Lodge shares the same postcode as the adjoining St. Michaels, and the driveway is accessed from School Road. However, it does not follow that the front elevation is the south elevation. Indeed, the post code has been determined by the position of the original building, prior to its conversion.
15. Therefore, the development would fail to meet the limitation under Paragraphs Part E.3 of Schedule 2, Part 1, Class E of the GPDO, since the outbuilding would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. The Council have raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class E of the GPDO, and from my reading of the plans, I find no reason to disagree with these findings.

Conclusion

16. The development is not one that complies with all of the limitations of Article 3, Schedule 2, Part 1, Class E respectively of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the outbuilding 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.

R Satheesan

INSPECTOR