

Appeal Decision

Site visit made on 17 July 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal ref: APP/C5690/X/25/3360589

No. 119 Waters Road, London SE6 1UH

- The appeal is made under section 195 of the Town and Country Planning Act 1990, (the Act), as amended by the Planning and Compensation Act 1991 against a refusal by the London Borough of Lewisham Council to grant a certificate of lawful use or development.
- The appeal was made by Mr A Arif.
- The application, dated 15 November 2024, Council ref: DC/24/138170, was refused by a notice dated 30 January 2025.
- The Application for a Certificate of Lawful Development was for the erection of a double storey rear extension and hip to gable roof extension and rear dormer to the dwelling at No. 119 Waters Road, London SE6 1UH.

Summary of decision: The appeal fails. A Certificate of Lawfulness is not issued.

Appeal property

1. No. 119 Waters Road, London SE6 1UH is a 2 storey dwelling at the end of a terrace of 4 houses at the junction of Waters Road with Boundfield Road. No. 119 thus stands on a corner plot; the front elevation of No. 119 fronts Waters Road; the house has a side elevation to Boundfield Road.
2. At the time of my visit, building work was being undertaken on the house.

Application

3. The Applicant, Mr Arif, sought a certificate of lawfulness, (LDC), for what was described in his appeal statement as: *“Application for a Lawful Development Certificate (proposed) submitted under Section 192 of the Town & Country Planning Act 1990 (as amended) Class A, B and C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of a two storey rear extension, hip-to-gable and rear roof extensions, and the installation of three front rooflights at 119 Waters Road, SE6.”*
4. The Council’s reason for refusing Mr Arif’s LDC application said: “The proposed two-storey rear extension would not meet the limitations and conditions of permitted development as the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would exceed 4 metres in height and have more than a single storey. As such the proposed development does not comply, (sic), with Part 1, Schedule 2, Class A, A.1(j)(i)(ii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (the Order). Planning permission is therefore required.” (Order Section 2 Interpretation 2.-(1) “original” means - (a) in relation to a building,, existing on 1st July 1948, as existing on that date; (b) in relation to a building, other than a building, built on or after 1st July 1948, as so built;).

Background and submissions

5. Section 192(1) of the Act provides for the making of an application to ascertain whether, (b) any operations proposed to be carried out in, on, over or under land, would be lawful. In an LDC appeal, as with pursuing an appeal against the issue of an enforcement notice on legal grounds, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant. There is no deemed planning application.
6. The Council said the existing, (at the time the application for an LDC was made), single storey rear outrigger had not been shown to not have been built contemporaneously with the main house. The outrigger thus would have formed part of the side elevation of the original dwelling that faced to Boundfield Road. Mr Arif's counter claim was that it had likely been a later addition, (presumably after 1948). Therefore, the "original" dwelling, (as defined in para. 4 above), at No. 119 did not have the small single story rear outrigger.
7. The Council said that given the consistency of the outrigger's form with adjoining properties, it was considered reasonable to assume that it had formed part of the original dwellinghouse. Because of that, and as the proposed two-storey rear extension would extend beyond a wall forming a side elevation of the original dwellinghouse, it would bring the proposal into conflict with the limitation of Class A.1(j)(i). There was also a problem here in that the proposed "rear" extension would also be a side extension of the dwelling as it faces onto Boundfield Road. The same restriction as for a 2 storey front extension applied here to Mr Arif's scheme.
8. The Council concluded that Mr Arif's house extension proposals failed to comply with the Order at Part 1, Schedule 2, Class A, A.1 – where (j), the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would - (i) exceed 4 metres in height, and (ii) have more than a single storey; (j (iii) refers to the enlargement to not have a width greater than half the width of the original dwellinghouse). Development is not permitted by Class A if there is failure to comply with those Order limitations.
9. Mr Arif said the rear outrigger had not been part of the original dwellinghouse. The proposed development would replace what was a non-original addition. The replacement would therefore extend outwards from the original rear wall. Whether it would result in the house having a width exceeding the limitation at (j)(iii) was dependent upon whether the existing rear extension formed part of the original dwellinghouse. Mr Arif referred to the High Court decision in *Arnold v Secretary of State for Communities and Local Government* [2015] EWHC 1197 (Admin), which concluded that the demolition of a wall forming a side elevation of the original house that had taken place since 1 July 1948 should be disregarded for the purposes of A.1 j(i)(ii). As it was, Mr Arif's claim that the rear projection was not original to the property, its demolition would not be in contravention with *Arnold*. Since it was proposed to be demolished, and the replacement would only affect the original rear wall of the house, limitation (j) would not be infringed. *Arnold* determined that the demolition of a wall forming a side elevation of the original house, having occurred after 1 July 1948, should be disregarded for the purposes of A.1.j(i)(ii). That means the assessment of original extensions under permitted development rules relied on the house's footprint as it existed on that 1948 date, irrespective of subsequent removals.

Inspector's considerations

10. I am not quite as exercised as the parties to this LDC application appeal on the importance of the question of the history of the single storey outrigger's construction, especially as the disagreement was not resolved. Had it been a determinative point, it

would have been for the Applicant to have shown, rather than merely asserted, that his position was correct.

11. The first part of the Council's reason to refuse the application said: "*The proposed two-storey rear extension would not meet the limitations and conditions of permitted development as the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would exceed 4 metres in height and have more than a single storey.*". That part of their reason for refusal correctly, in my view, reveals Mr Arif's scheme's failure to comply with Part 1, Schedule 2, Class A, A.1(j) of the Order – the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, (irrespective of which version of the "original" dwellinghouse), and would - (i) exceed 4 metres in height, and (ii) have more than a single storey. What would have been just a rear extension on a dwelling without a side wall facing on to a highway, on this corner plot it also becomes a side extension to the dwelling, and subject to greater restriction. That limitation applies even though the extension would be set back slightly from the side elevation of the house facing to Boundfield Road.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR