



Appeal Decision

Site visit made on 25 April 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/X5210/X/22/3305671

4 Ellerdale Close, Camden, London NW3 6BE

- 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 James Cutress against the decision of the Council of the London Borough of Camden.
 - The application Ref 2022/0567/P, dated 11 February 2022, was refused by notice dated 19 July 2022.
 - 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 "Single storey extension to the rear."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Procedural Matters

2. I have used the description of the proposal from the Council's decision notice, which correctly describes the proposed development. The appellant has also used the same description within their statement of case, and therefore neither party would be prejudiced by this.
3. 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.
4. There are 2 sets of proposed drawings submitted as part of this appeal. The parties agreed during the site visit that the Council determined the LDC application based on the set of revised proposed drawings¹. I have also determined the appeal based on these revised proposed drawings.

¹ P1011-PL901B- Revised Ground Floor Plan; P1011-PL908B- Revised Proposed Side Elevation West; P1011-PL902B- Revised Proposed First Floor and Roof Plan; P1011-PL906C- Revised Proposed Rear Elevation.

Main Issue

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

Reasons

6. The appellant seeks to establish that the proposed rear extension would be granted permission by virtue of Class A of Schedule 2, Part 1 of the GPDO. Subject to limitations and conditions, Class A permits the enlargement, improvement, or other alteration of a dwellinghouse. Paragraphs A.1 and A.2 sets out limitations which proposals must adhere to benefit from permitted development rights.
7. The Council determined that the proposed rear extension fails to meet:
 - Part A.1(j) of Schedule 2, Part 1, Class A of the GPDO.
 - Part A.2(b) of Schedule 2, Part 1, Class A of the GPDO.
8. The relevant restriction under Part A.1(j), states that development is not permitted by Class A if the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and have a width greater than half the width of the original dwellinghouse.
9. Paragraph A.2(b) states that in the case of a dwellinghouse on Article 2(3) land, development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse.
10. Article 2 Interpretation (1) of the GPDO defines Article 2(3) land as National Parks, areas of outstanding natural beauty and conservation areas etc. The appeal property is located within the Fitzjohn's/Netherhall Conservation Area and is thus Article 2(3) land.
11. Article 2 Interpretation (1) of the GPDO defines 'original' as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1st July 1948, as so built. The existing dwelling contains a two-storey rear bay window, and there is no dispute between the parties that the two storey bay window forms part of the original building. Indeed, this is clear from its character, form, materials, and appearance, which matches other two storey bay windows found elsewhere on neighbouring properties.
12. Therefore, the relevant question is whether the angled walls of the bay window are correctly characterised as a side wall of the original dwellinghouse. The Government's Technical Guidance (TG)² states 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.*" However, the diagram that follows in the TG does not address whether a bay window is to be defined as containing side elevations for the purpose of

² The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

permitted development rights. It is therefore a matter of planning judgement based on the particular facts of the case.

13. During the site visit, I observed that the relatively shallow angle of the bay window means that the angled walls face more towards the rear than the side of the property. Furthermore, despite being two storeys in height, given its limited projection from the main rear wall of the dwelling, as a matter of fact and degree, the rear bay window forms part of the rear main wall of the house. Indeed, this is consistent with two previous LDC approvals at No 2 Ellerdale Close, where the Council judged that the angled walls of a similar rear two storey bay window formed part of the rear wall of the house. Reading all the evidence submitted, I find no reason to adopt a different approach.
14. In support of their case, the Council refer to a dismissed appeal decision at the London Borough of Barnet³, where the Inspector found that the angled walls of the two-storey bay window formed side elevations/walls. However, the angled walls of the bay window at 4 Ellerdale Close have a smaller projection and have a shallower angle than that in the Barnet appeal, with the angled walls facing more towards the rear of the property. As such the circumstances in the Barnet decision are materially different to the current proposal.
15. Therefore, the development would not fail to meet the limitations under Paragraphs A.1 (j) and A.2 (b) of Schedule 2, Part 1, Class A of the GPDO, since the enlargement will not extend beyond a wall forming a side elevation.
16. The Council have raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class A of the GPDO, and from my reading of the drawings, I find no reason to disagree with these findings.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the "single storey extension to the rear" was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

INSPECTOR

³ Appeal Ref: APP/N5090/X/18/3203408.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 February 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

R. Satheesan

INSPECTOR

Date: 12 May 2023

Reference: APP/X5210/X/22/3305671

First Schedule

Single storey extension to the rear

Second Schedule

Land at 4 Ellerdale Close, Camden, London NW3 6BE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 May 2023

by **R Satheesan BSc PGCert MSc MSc MRTPI**

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Not to scale.

