
Appeal Decision

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 August 2015

Appeal Ref: APP/X5210/X/14/3000342
20 Mackeson Road, London, NW3 2LT

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Dru Masters against the decision of the Council of the London Borough of Camden.
- The application Ref 2014/4172/P is dated 25 June 2014.
- 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 new basement.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Procedural Matters

1. The application is dated 25 June 2014 and it was registered on 2 July 2014¹. The statutory eight week period expired on 27 August 2014 and the appeal was made on 13 November 2014. The Council purported to refuse the application by notice dated 1 January 2015. The proposal is described in the application as 'new basement' but on the decision notice it is described by the Council as 'excavation of basement to provide ancillary room for existing dwellinghouse (Class C3)'. In this appeal I will consider the proposal as described on the application.
2. From the Appellant's final comments dated 6 February 2015 it is apparent that the proposed basement has been commenced, if not completed. I, however, have to determine the application as at the date it was made, that is, 25 June 2014.
3. The Town and Country Planning (General Permitted Development Order) 2015 (the GPDO 2015) came into effect on 15 April 2015. However, the applicable permitted development rights must be taken from the GPDO in force at the date of the application² and any changes in the GPDO 2015 do not apply retrospectively. The relevant GPDO in this appeal is therefore the GPDO 1995 as amended, which I will refer to as the GPDO.

¹ Appendix 1 to the Appellant's grounds of appeal but 30 June 2014 in the Council's letter dated 9 January 2015

² R J Williams Le Roi v SSE & Salisbury DC [1993] JPL 1033

4. Interested persons and the Council have provided information about such matters as the Mansfield Conservation Area in which the appeal property is located, potential disruption, potential adverse effect on neighbouring properties and the setting of a precedent. However, in an appeal such as this the only matter for consideration is the lawfulness of the proposal at the date of the application and the planning merits, which include Development Plan policy, are not taken into account.
5. In the circumstances of this case there was no need to make a site visit and I have determined the appeal on the basis of the documents on the file, the provisions of the 1990 Act and the GPDO.

The Council's Case

6. The Council's reason for refusing the LDC is that 'the proposed basement, by virtue of it being development involving significant excavation and engineering works necessitating the engagement of a specialist engineer, would, as a matter of fact and degree, constitute an 'engineering operation' of a scale and complexity requiring a separate grant of planning permission and would exceed the scope of (and hence fall outside) of any development right outlined in the GPDO 1995 as amended'.

The Appellant's Case

7. The Appellant contends that the proposed small basement (length no more than 4.2m, maximum width 5.3m³) located under the middle section of the ground floor of the existing house would be within permitted development rights.

Reasoning

8. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land⁴. One of the specified exceptions is provided for by Article 3 of the GPDO pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2. Class A of Part 1 of Schedule 2 permits the enlargement, improvement or other alteration of a dwellinghouse subject to a number of specified conditions, exceptions and limitations.
9. The Appellant contends that the proposal would not fall foul of any of the conditions, exceptions and limitations imposed by A.1, A.2 and A.3 and that it would satisfy the interpretation of Class A as set out in A.4, A.5 and A.6. There is no dispute from the Council on these matters and I have no reason to find otherwise.
10. For the purposes of the 1990 Act, building operations include structural alterations of, or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. But there is no statutory definition of engineering operations. The Court has taken the view that an engineering operation could be an operation which would generally be supervised by an engineer but it was unnecessary that it should actually have

³ Dimensions from the Council's letter dated 9 January 2015

⁴ S.57 of the 1990 Act

been so supervised⁵. The definition of a building operation includes structural alterations and the Appellant has provided information that structural engineers are instructed for practically all alterations to existing buildings including foundations for extensions, underpinning and loft conversions⁶. On this basis it seems to me that, particularly in proposals such as this involving enlargement of a dwellinghouse by the creation of a basement, there is a fine line between building and engineering operations and that both types of operations can be found in works that are permitted by Class A.

11. Class A permitted development rights are described as 'development within the curtilage of a dwellinghouse' and are not confined to building operations alone by any of the specified conditions, exceptions and limitations; nor are engineering operations specifically excluded from permitted development rights in Class A.
12. The basement proposed in this appeal would satisfy all the limitations, conditions and exceptions of Class A and I conclude that it would be permitted development.
13. As the proposed basement would be 'works begun after 5 December 1968 for the alteration of a building by providing additional space therein below ground' it would be development as meant by s.55 of the 1990 Act⁷. However, for the reasons I have given above the works would be permitted development and an express grant of planning permission would not be required.
14. I have taken the references and documents relating to another 'basement' case⁸ into account insofar as they are relevant to the facts of this case. Similarly I have taken into account the appeal decisions and Court judgements referred to by the Council. I note, however, that each of the cases referred to involves a question of fact and degree and the facts in those cases were different, and therefore can be distinguished, from those in this appeal.

Conclusions

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

Decision

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

Gloria McFarlane - Inspector

⁵ *Fayrewood Fish Farms Ltd v SSE* [1984] JPL 267 - The Encyclopaedia of Planning Law and Practice paragraph P55.19

⁶ The Appellant's final comments dated 6 February 2015

⁷ S.55(2) of the 1990 Act which provides that development does not include 'the carrying out for the maintenance, improvement or other alterations of any building of works which (i) affect only the interior of the building or (ii) do not materially affect the external appearance of the building and are not works for making good war damage or works begun after 5 December 1968 for the alteration of a building by providing additional space therein below ground'.

⁸ 24 Quadrant Grove

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 25 June 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in green 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 operation would have constituted permitted development as defined by Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended and thus would have benefitted from deemed planning permission pursuant to Article 3(1) thereof.

Gloria McFarlane
Inspector

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First Schedule

A new basement

Second Schedule

Land at 20 Mackeson Road, London, NW3 2LT

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: 20 August 2015

by **Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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Scale: Not to scale

