

Delegated Report (Non-determination)		Analysis sheet		Expiry Date:		16/05/2014	
		N/A / attached		Consultation Expiry Date:		NA	
Officer				Application Number(s)			
Jonathan McClue				Council Ref: 2014/1374/P PINS Ref: APP/X5210/X/16/3161902			
Application Address				Drawing Numbers			
15 Gayton Crescent London NW3 1TT				Refer to Decision Notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Single storey rear extension							
Recommendation(s):		Certificate of Lawfulness (Proposed) application would have been refused if an appeal under non-determination had not been made.					
Application Type:		Certificate of Lawfulness (Proposed)					
Conditions or Reasons for Refusal:		Refer to Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses	00	No. of objections	00
				No. electronic	00		
Summary of consultation responses:		NA					
CAAC/Local groups* comments: <small>*Please Specify</small>		NA					

Site Description

This application relates to a detached 4 storey (including basement) residential dwelling located on the southern side of Gayton Crescent at the junction with Willow Road.

Relevant History

The application site is subject to a significant planning and enforcement history. The below list is not exhaustive but is most relevant to the current application.

Planning History

2008/3188/P: A Certificate of Lawfulness (Existing) was granted on 19/10/2008 for the erection of two single storey ground floor level extensions to the rear of the single dwellinghouse. This certificate was granted on the basis of plans submitted from 1906 which show 2 single storey extensions to the rear of the property.

2008/4730/P: A Certificate of Lawfulness (Proposed) was refused on 24/12/2008 for the erection of a basement, ground and first floor rear extension to the single dwellinghouse (Class C3) for the following reasons:

- The proposed rear extension would be more than one storey and would be within seven metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse. It therefore fails to comply with Class A.1 (f) (ii) of the Town and Country Planning (General Permitted Development Order 1995 as amended by Amendment) (No.2) (England) Order 2008.

- The enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse. It therefore fails to comply with Class A.2 (c) of the Town and Country Planning (General Permitted Development Order 1995 as amended by Amendment) (No.2) (England) Order 2008.

This refusal is currently subject to an appeal under APP/X5210/X/16/3160682. The Inspector has stated that the proposed development appears to be different from what was subsequently built and therefore wonders whether the Appellant wishes to continue with this appeal as circumstances have changed and it does not appear that the Appellant had any intention of constructing that extension.

2013/1031/P: Planning permission was refused on 04/06/2014 for the erection of a two storey side extension on south side, including erection of a new bay window plus new access with balcony and stone coping on north side; and erection of single-storey lean-to extension at lower ground level rear to an existing dwelling house (Class C3).

The refusal was appealed under APP/X5210/A/13/2203132 at a Public Inquiry and was part allowed, part dismissed on 19/12/2014.

2013/7485/P: A Certificate of Lawfulness (Existing) was refused and enforcement action was warned on 04/03/2014 for the construction of a rear WC extension at lower ground floor level (north-eastern corner of building). This application was refused as the proposal does not constitute permitted development (under the General Permitted Development Order 1995 (as amended)) and had not been substantially completed for a period of 4 years at the time of the application. It is noted that the extension that this refusal relates to is the same as the subject application.

2013/7388/P: A Certificate of Lawfulness (Existing) was refused and enforcement action was warned on 04/03/2014 for the construction of a three storey rear extension (south-eastern corner of building). This application was refused as the proposal does not constitute permitted development (under the General Permitted Development Order 1995 (as amended)) and had not been substantially completed

for a period of 4 years at the time of the application.

This refusal is currently subject to an appeal under APP/X5210/X/16/3165517. The Inspector has pointed out that even if this appeal were to be allowed and a LDC issued, that certificate would only certify lawfulness at the time of the application and not lawfulness subsequently when circumstances have changed.

2013/7395/P: A Certificate of Lawfulness (Existing) was refused and enforcement action was warned on 04/03/2014 for the construction of a four storey rear staircase extension (central part of rear elevation). This application was refused as the proposal does not constitute permitted development (under the General Permitted Development Order 1995 (as amended)) and had not been substantially completed for a period of 4 years at the time of the application.

2015/5288/P: A Certificate of Lawfulness (Existing) was refused with a warning of prosecution to be taken on 10/12/2015 for the construction of a three storey rear extension (south-eastern corner of building). It was refused for the following reason:

The Council refuses this application for a lawful development certificate for the existing use or development because it remains the subject of an enforcement notice (ref: EN14/0149) dated 5th March 2014 as upheld at appeal by the Secretary of State's Planning Inspector in its decision letter dated 19th December 2014. The Council does not consider the existing use to be lawful under S191 of the Town and Country Planning Act 1990 (as amended).

This refusal is currently subject to an appeal under APP/X5210/X/16/3148353. The Inspector's preliminary view is that this appeal cannot succeed given the requirement in s191(2)(b) that an operation can only be lawful if it does "not constitute a contravention of any of the requirements of any enforcement notice then in force".

Enforcement History

EN14/0149: Enforcement case against an unlawful three part rear extension ranging from one to four stories. The enforcement action resulted from three refused Certificate of Lawfulness applications under 2013/7485/P, 2013/7388/P and 2013/7395/P. An Enforcement Notice was issued on 05/03/2014 with a requirement to remove the three part rear extension and make good the rear elevation with a period of three months after the notice took effect on 16/04/2014.

The Enforcement Notice was appealed under APP/X5210/C/14/2217197 at a Public Inquiry. The existing rear stair tower and the lower ground floor toilet extension were granted planning permission, however, the appeal was dismissed for the three storey element on the south-eastern corner with the Enforcement Notice being upheld and varied on 19/12/2014.

Appeal History

The Enforcement Notice (ref: EN14/0149) was appealed under APP/X5210/C/14/2217197 and the refused planning permission (ref: 2013/1031/P) under APP/X5210/A/13/2203132. Both appeals were decided by way of Public Inquiry over 25-27 November with a decision made by the Planning Inspectorate on 19/12/2014. A costs application was made by the Council during the appeal.

The Enforcement Notice was varied by deleting paragraph 5 and inserting the following:

"WHAT YOU ARE REQUIRED TO DO

Within nine months of the date of this decision:

(i) Completely demolish the three-storey extension and balcony located at the south east corner of the house and remove from the land all materials resulting from the demolition.

(ii) Restore the part of the rear wall of the house to which the extension is attached to its condition before the development occurred, including the removal of the French windows that open onto the balcony.

Current Appeal

The application site is currently subject to 4 appeals which will be decided by way of a Public Inquiry. Each appeal will be considered on its own merits and determined individually. The appeals are:

Appeal A -

PINS ref: APP/X5210/X/16/3148353

LPA ref: 2015/5288/P

Appeal B -

PINS ref: APP/X5210/X/16/3160682

LPA ref: 2008/4730/P

Appeal C -

PINS ref: APP/X5210/X/16/3165517

LPA ref: 2013/7388/P

Appeal D -

APP/X5210/X/16/3161902

LPA ref: 2014/1374/P

This application relates to appeal D which is appealing against the Council's failure to determine the Certificate of Lawfulness (Proposed).

Relevant policies

Class A of the Schedule to The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008

Department for Communities and Local Government - Permitted development for householders - Technical Guidance

Assessment

1.0 Background

1.1 This application for a Certificate of Lawfulness for a Proposed use or development (CLOPUD) was submitted on 20/02/2014. The description of the proposal on the application form was for *'The vertical extension of Existing Rear WC Extension.'* The Council registered the application with the description *'Single storey rear extension'*. It is noted that at the time of the application the rear ground floor WC extension was unauthorised and a Certificate of Lawfulness (Existing) application for its retention was refused under 2013/7485/P. An Enforcement Notice (ref: EN14/0149) was issued on 05/03/2014 against the unauthorised rear extensions (including the subject ground floor WC extension). The notice took effect on 16/04/2014. Therefore, this CLOPUD relates to an extension of an unauthorised addition at the time of its submission.

1.2 According to the Council's internal records, the applicant was advised that this application did not constitute permitted development and it was subsequently withdrawn by the Council in 2014.

1.3 The Planning Inspectorate wrote to the Council on 23/12/2016 to confirm that the subject application (ref: 2014/1374/P) has been registered as an appeal against a failure to determine the application under ref: APP/X5210/X/16/3161902. The Inspectorate has confirmed that:

'Any LDC issued, however, would only certify lawfulness had the development been begun at the time of the application. At that time there was no planning permission in place for the WC extension that was proposed to be enlarged. Thus the outcome of Appeal C may have relevance since the Inspector suggests that it would not be lawful to enlarge an extension which itself might not be lawful.'

1.4 The Council agrees with the Inspector's approach and considers that the CLOPUD must fail as it would be enlarging an extension which itself was not lawful at the time of the application. Further justification of this is explained below.

2.0 Proposal

2.1 The proposed drawings show the ground floor rear WC extension hatched in grey. The proposed extension has a flat roof with a maximum height of 3.9m to the top of the parapet; a maximum depth of 2.24m and a maximum width of 2.9m (all measurements based on drawings submitted).

2.2 The existing plans show a ground floor rear extension with a height of approximately 3.07m. This extension was unauthorised at the time of the application. The proposal therefore involves the enlargement of an extension which was unlawful at the time of application.

2.3 The proposed development forms part of a larger unauthorised extension which includes a central element attached to the main roof and a flat roofed element with a terrace.

2.4 As stated in para 1.2 (above) this application was originally withdrawn by the Council. Following the submission of a non-determination appeal the Council has now reversed this decision and is making a recommendation based on the decision it would have made if the application had not been withdrawn.

3.0 Grounds of Application and Appeal

3.1 According to the applicant's submitted application form it considers that *'The proposed building works are permitted by Class A.1 of the Schedule to The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and no Planning Permission from the Local Planning Authority was needed.'* The Appellant, as part of their Statement of Case, claims that the proposal to increase the height of the single storey rear WC extension would have been permitted by The Town and Country Planning (General (General Permitted Development) (Amendment) (England) (No 2) Order 2008. They also state that the proposal would comply with the

'Technical Guidance issued by the Department of Communities and Local Government which at page 9 unequivocally explains and illustrates that, if an extension less than 2 metres from the boundary has a flat roof, then the flat roof may be no higher than 3 metres, however, a parapet wall may exceed this height limit of 3 metres.'

3.2 The issue with the above is that the CLOPUD relates to an unlawful extension. The proposed development must also be considered as part of the entire enlargement to the rear, of which it would form part of, to be considered compliant with the relevant parts of the General Permitted Development Order.

4.0 Analysis

4.1 The proposed development relates to the extension of an unlawful development and is therefore not considered to be permitted development. Notwithstanding this, a full assessment of the proposal under the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 has been undertaken below. The development would be assessed against Class A which relates to permitted development rights for *'The enlargement, improvement or other alteration of a dwellinghouse'*.

4.2 The most recent technical guidance issued by the Department for Communities and Local Government on April 2014 and decisions from Inspectors on the subject have established that when a proposed enlargement is attached to a previous extension of the original dwellinghouse, the characteristics of the combined extensions need to be considered when assessing whether or not the proposed enlargement is permitted development. All cumulative extensions/enlargements of a dwelling must therefore be considered together against the original dwellinghouse. On this basis, the ground floor WC extension which forms part of this proposal must be considered in combination with the remainder of the multiple storey rear extension to which it is attached. This total enlargement would clearly fall outside a number of the criteria of Class A of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, including:

- The cumulative enlargement, including the central staircore element connected to the roof of the original building and the 3 storey element with a terrace/balcony, would be more than one storey high and be within 7 metres of the rear boundary of the dwellinghouse which would be contrary to part f) of Class A of the GPDO
- The cumulative enlargement would be within 2 metres of the boundary of the dwellinghouse with the height of the eaves of the enlarged part exceeding 3 metres which would be contrary to part g) of Class A of the GPDO
- The cumulative enlargement would include the construction of a balcony which would be contrary to part (i)(i) of Class A of the GPDO
- The cumulative enlargement would include an alteration to part of the roof of the dwellinghouse which would be contrary to part (i)(iv) of Class A of the GPDO

4.3 When considering whether a development proposal is permitted development, all of the relevant Parts of the rules and all the Classes within those Parts need to be taken into account. The cumulative enlargement would involve the alteration of the roof via the central staircore element which extends the eaves and slope of the original roof. Dwellinghouses on Article 1(5) land (i.e. within conservation areas) do not have permitted development rights under Class B of the GDPO. Therefore, the proposal would not be permitted development as it forms part of an enlargement to the original dwellinghouse within a conservation area that makes an alteration to the roof.

4.4 Based on the above, the proposal does not constitute permitted development under the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008.

5.0 Recommendation: Refuse the Certificate of Lawfulness (Proposed)