

## **IN THE MATTER OF 42 WELL WALK, LONDON NW3 1BX**

### **ADVICE**

1. I am instructed to advise Mr and Mrs Osborne on a proposed extension to their house at 42 Well Walk, London NW3 1BX. I have been provided with drawings P-200A and P-255 (Existing and Proposed Floorplans) on which the CLOPUD application would be based.

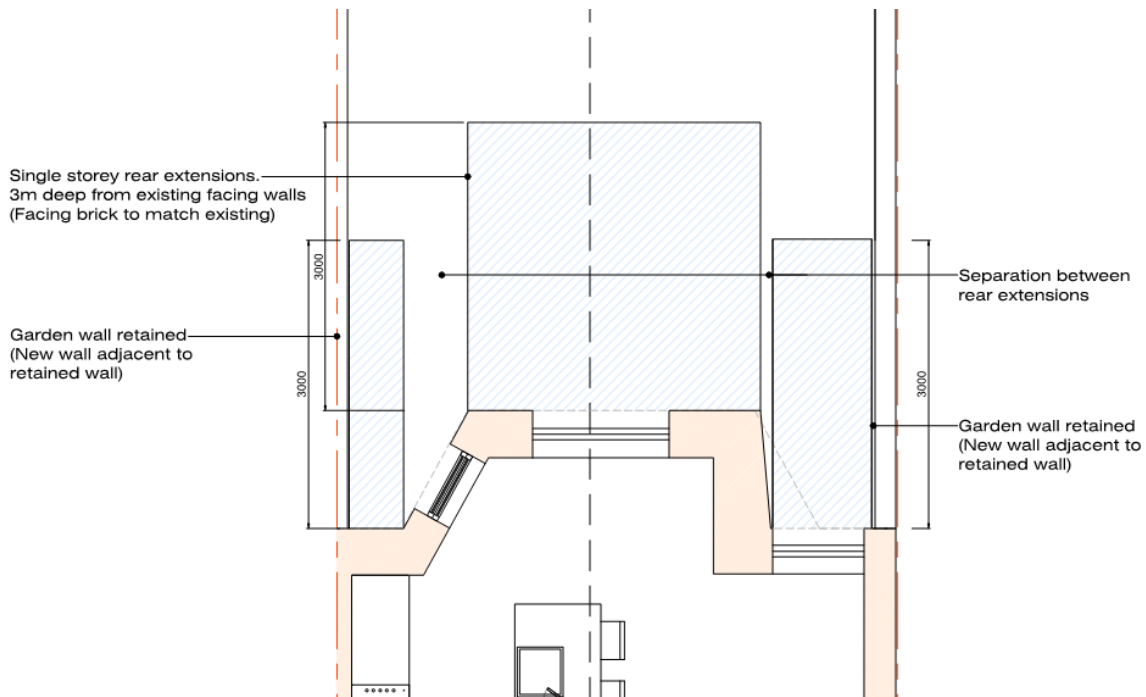
#### **Summary**

2. A rear extension from the centre of the bay, as proposed, would be lawful up to 3 metres from the bay.

#### **Background**

3. 42 Well Walk is a five storey terraced house (including roof and basement accommodation). For present purposes it is sufficient to say that its rear elevation is east-facing. The house was constructed as a pair with number 44 which is to the north. The other adjacent terraced building is number 40. Number 40 also has five storeys, but is distinctly lower in height.
4. Number 42's rear elevation has a bay window, about 1.2 metres deep, with three flat sides. The rear elevation wall continues either side of the bay.
5. The site is within the Hampstead Conservation Area. 42 Well Walk is not a listed building, but number 40 is, listed at grade II\* for its architectural interest as a Georgian building and as the residence of the artist, John Constable.
6. A number of applications for Certificates of Lawfulness of Proposed Use or Development ('CLOPUDs') have been made on behalf of Mr and Mrs Osborne for determinations that various forms of single storey rear extensions could be constructed under permitted development rights. The most recent application was reference

2021/0502/P for the ‘Erection of centre single-storey rear extension and two single-storey rear extensions’. As proposed by 2021/0502/P, these would comprise one 3 metre deep extension from that part of the rear wall which hosts the rearward central side of the bay window, and two from the rear wall either side of the bay.



7. The Council considered that proposal 2021/0502/P would be in breach of paragraphs A.1(j) and A.2(b) and so not permitted development.

8. These are respectively:

A.1(j) “Will the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, ...

(iii) have a width greater than half the width of the original dwellinghouse?”

A.2(b) “Would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse?”

9. Under paragraph A.1(j) the Council said ‘The ‘enlarged part of the dwelling house’ is the enlargement proposed by this application.’ In respect of A.2(b) the Council’s reasoning was ‘There is a cantered bay at the rear of the Property, which forms part of the original dwellinghouse, and which, in the Council’s view, incorporates side elevations. The extension would project beyond both of the side elevations.’

## Permitted development rights

10. The relevant potential permitted development rights are in Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. Class A authorises:

“The enlargement, improvement or other alteration of a dwellinghouse .”

11. Various developments which would otherwise fall within this broad category are excluded from the permitted development right by paragraphs A.1 and A.2.
12. Paragraph A.1 applies to all potential exercises of the permitted development right. As relevant to the present issues it says:

**“A.1.**

Development is not permitted by Class A if— ...

- (e) the enlarged part of the dwellinghouse would extend beyond a wall which—
- (i) forms the principal elevation of the original dwellinghouse; or
- (ii) fronts a highway and forms a side elevation of the original dwellinghouse;
- (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—
- (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
- (ii) exceed 4 metres in height;
- (g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—
- (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or
- (ii) exceed 4 metres in height;
- (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,

- (ii) have more than a single storey, or
  - (iii) have a width greater than half the width of the original dwellinghouse;”
13. Dwellinghouses on ‘article 2(3) land’, which includes conservation areas, are subject to further removals of permitted development rights:<sup>1</sup>
- “A.2.**
- In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if— ...
- (b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;
  - (c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse; or
  - (d) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).”
14. In the present case “*original*” means ... in relation to a building ... existing on 1st July 1948, as existing on that date’.<sup>2</sup>
15. The Ministry of Housing, Communities and Local Government has published *Permitted development rights for householders Technical Guidance*, the current edition being dated September 2019. This is intended to give ‘an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances’. The Technical Guidance does not have any legal status; it does not alter or determine the meaning of the General Permitted Development Order. However it does represent the government’s general understanding of its own legislation, although only the Court is able to rule on the meaning of the GPDO.
16. A ‘stepped’ approach is taken to measuring distances from rear elevations:

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<sup>1</sup> These are additional limitations and both A.1 and A.2 are to be applied: see *Evans v Secretary of State for Communities and Local Government* [2014] EWHC 4111 (Admin), [2015] JPL 589 at para 24 per Neil Cameron QC.

<sup>2</sup> Town and Country Planning (General Permitted Development) (England) Order 2015, art 2(1).

“Where the original rear wall of a house is stepped, then each of these walls will form ‘the rear wall of the original dwellinghouse’. In such cases, the limits on extensions apply to any of the rear walls being extended beyond. In the example below showing a plan of a semi-detached house with an original ‘stepped’ rear, each of the extensions (shaded) would meet the requirements for a single storey extension as they do not extend more than 6 metres beyond the rear wall (or more than 3 metres on article 2(3) land or sites of special scientific interest).”

17. The side elevation provisions are explained most fully under para A.1(j):

“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.”

Where an extension is beyond any side wall, the restrictions in (j) will apply.

18. Permitted development rights are to be interpreted in a broad or common sense manner.<sup>3</sup> However perhaps the real starting point is that the General Permitted Development Order is secondary legislation and is to be construed in the same way as other legislation. The ordinary meaning of the language is the best place to begin, having regard to the totality of the Class and how it fits into its part. It is necessary to try to understand a particular paragraph from the provisions that surround it.
19. In *Evans* the High Court held that the effect of paragraph A.2(c) (on extensions beyond a rear wall) is that ‘an extension of more than one storey which extends beyond the rear wall of the original dwelling house, being that part of the wall immediately adjacent to the extension at the same vertical level as the extension, is not permitted development’.<sup>4</sup> The Inspector in that case had taken this vertical ‘step’ approach from the Technical Guidance’s approach to horizontal steps: where a rear wall has different positions, then the extension is measured from the point of the extension:

“Further, there is no reason why the logic of the guidance in relation to vertically stepped rear walls under paragraph A.1(e) should not be equally applicable to the interpretation of ‘the rear wall’ under A.1(f) and A.2(c) for horizontally stepped

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<sup>3</sup> *English Clays Lovering Pochin & Co Ltd v Plymouth Corp* [1973] 1 WLR 1346; [1973] 2 All ER 730 at 735 per Goulding J.

<sup>4</sup> *Evans v Secretary of State* at para 24.

walls. Thus it does not mean ‘the (section of) wall furthest from the front’ but rather each (section of) wall at the rear from which the extension is intended to project.”

20. The High Court accepted the Secretary of State’s submissions that the Inspector’s reasoning was adequate and thought that the Technical Guidance supported it, at least in some respect.<sup>5</sup>
21. It is possible for multiple extensions to be constructed. Provided that they do not touch each other then they are treated separately<sup>6</sup> unless the particular provision being considered refers to total enlargements.

*The potential extensions*

22. The most recent CLOPUD application concerned three separate extensions, all built out from the rear wall of the house.
23. The 3 metre limit on the depth of a rear extension is judged from the part of the wall from which it projects. The 3 metre extension proposed from the centre of the bay is not in breach of the rear extension limitation in paragraph A.1(i). That also does not raise any issues of side elevations. As the Council’s earlier analysis seems to accept, the proposed extension from the centre of the bay would be lawful.
24. In refusing CLOPUD application 2021/0502/P, the Council considered that proposal would be in breach of paragraphs A.1(j) and A.2(b) and so not permitted development. Neither A.1(j) or A.2(b) apply to the 3 metre extension proposed from the centre of the bay, as shown on drawing P P-255 (Proposed Floorplans)
25. The extensions which CLOPUD application 2021/0502/P proposed to either side of the bay raise additional issues. Paragraph A.1(j)(iii) requires the enlarged part of the dwellinghouse not to ‘have a width greater than half the width of the original dwellinghouse’. The Council added together the three proposed extensions and concluded that in total they exceeded half the width of the original. That approach is incorrect. The question is the width of ‘the enlarged part’ and in CLOPUD application 2021/0502/P the proposals were separate enlarged parts.<sup>7</sup> The Council cited the Technical Guidance’s view that “*Enlarged part of the house*” is the enlargement which

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<sup>5</sup> See *Evans*, para 24, 26.

<sup>6</sup> See Technical Guidance, pages 19, and compare pages 27 and 28.

<sup>7</sup> See paragraph 24 above.

is proposed to be carried out under Class A”; however, that does not aggregate several separate enlargements.

26. The *Evans* decision considered the point from which the rear extension projected. In the present proposals the extension would be from the rear elevation and not from the side elevation.

A handwritten signature in black ink, appearing to read 'Richard Harwood', written in a cursive style.

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Richard Harwood QC

15<sup>th</sup> November 2021