



Appeal Decision

Site visit made on 3 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2024

Appeal Ref: APP/R5510/X/22/3313833

Bridge House, 1a Bridge Way, Ickenham UB10 8QR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Shaida Razaq against the decision of the Council of the London Borough of Hillingdon.
- The application ref 43797/APP/2022/1764, dated 28 May 2022, was refused by notice dated 3 October 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 described on the application form as follows: '*This application relates to a single storey side extension to the house-at ground level meeting permitted development. The house is a detached 4-bedroom property. The material used in the side extension will match the existing house i.e., matching bricks and double glazing. As the plans show; the side extension will be half the width of the original house and only extending up to the original house. The front parapet will have a maximum height of 3.4m with a fibre glass flat roof.*'

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Whether an LDC should be granted in respect of the proposal is strictly a matter of fact and law. Therefore, matters pertaining to the Council's handling of the application and planning merits considerations cannot form part of my deliberations.

Main Issue

3. The main issue in the appeal is whether the Council's refusal to grant an LDC for the proposal was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) at Article 3, Schedule 2, Part 1, Class A.

Reasons

4. It is for the appellant to show that an LDC should be granted for the proposal, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a modern, two-storey detached dwelling. The dwelling occupies a corner plot, adjacent to the junction of a residential cul-de-

sac and a main road. The principal elevation of the dwelling faces towards the cul-de-sac, whilst one of the side elevations faces towards the main road.

6. The side elevation facing towards the main road is around 2 to 3 metres from a close boarded timber fence, which marks the curtilage boundary. The fence is separated from the back edge of the pedestrian footway by a strip of land, the depth of which varies from around 1 to 1.5m. The strip is mostly covered with maturing trees and vegetation, with chain link fencing running adjacent to the footway.
7. The proposal entails erecting a single storey extension on the main road facing side of the dwelling, to provide an enlarged kitchen and utility room. At Article 3, Schedule 2, Part 1, Class A, the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwelling. This is subject to the size and locational limitations in paragraphs A.1 and A.2 and the conditions in paragraphs A.3 and A.4 being met.
8. In Class A, paragraph A.1 (e)(ii) does not permit development where the enlargement would extend beyond a wall which fronts a highway and forms a side elevation of the original dwelling. Paragraph A.1(i) does not permit development where the enlargement would be within 2 metres of the curtilage boundary and the height of its eaves would exceed 3m. In addition, paragraph A.1(j) does not permit development where an enlargement would extend beyond a wall forming a side elevation of the original dwelling and it would exceed 4m in height, be more than single storey or have a width greater than half that of the original dwelling.
9. The appellant argued that the main road facing side elevation of the dwelling does not front the highway. According to the Government's Technical Guidance¹, which assists in interpreting the GPDO, the extent to which an elevation fronts a highway will depend on factors including the angle between the elevation of the dwelling and the highway as well as the distance between the dwelling and the highway. If the angle is more than 45 degrees the elevation will not normally be considered as fronting a highway. Where the distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the dwelling and the highway.
10. Being less than 45 degrees, the angle of the side elevation to the main road does not advance the appellant's argument. At perhaps no more than 4.5m apart at the closest point, the side elevation is a relatively short distance from the footway. Given their limited separation, I am not convinced that the distance between the side elevation and the nearest part of the highway could be described as substantial. In my view, to be so described there would have to be a considerably greater expanse of land between the side elevation and the highway.
11. Furthermore, the side elevation is seen as being close to the main road. Intervening fencing and maturing planting make little difference in terms of the proximity of the side elevation to the main road apparent in views. Therefore, in my opinion the side elevation cannot be regarded as being a substantial distance from the highway, either physically or visually.

¹ Permitted development rights for householders: Technical Guidance MCHLG September 2019

12. Neither am I persuaded that the vegetated strip should be regarded as a significant intervening area of land between the curtilage boundary and the highway. That might be more likely where there is a sizeable area of land physically separate from the property, perhaps also containing one or more buildings or other structures of considerable scale, which is put to a definite use. In the case of the strip however, although fenced off from the property and the highway and apparently in different ownership, it is relatively narrow, is mostly overgrown, contains no buildings and is put to no obvious use.
13. Accordingly, in the particular circumstances of this case, as a matter of fact and degree, in my opinion the side elevation of the dwelling fronts the highway. There is no firm evidence that might point towards an alternative finding. It follows that the proposal would exceed the limitation in paragraph A.1(e)(ii) of Class A.
14. The Council also argued that it was unclear whether the proposal would meet the size limitations in Class A paragraphs A.1(i) and A.1(j), as the submitted drawings were not to scale. Given that those drawings have a scale bar, it is possible to ascertain the dimensions of the extension with a reasonable degree of certainty. The drawings show that the extension eaves would not exceed 3m in height and that the overall height would not exceed 4m, whilst the width of the extension would be no more than half that of the original dwelling. Therefore, I am satisfied on the evidence before me that the proposal would meet the limitations in paragraphs A.1(i) and A.1(j). Furthermore, I am satisfied on the available evidence that the other relevant limitations in paragraph A.1 and the conditions in paragraph A.3 would be met, whilst the limitations and conditions in paragraphs A.2 and A.4 do not apply to the proposal. Nevertheless, development which exceeds any of the limitations of Class A cannot be permitted by the GPDO.
15. Consequently, the appellant has been unable to show that planning permission is granted for the proposal by the GPDO at Article 3, Schedule 2, Part 1, Class A. It follows that in the absence of an express grant of planning permission, the proposal would not be lawful for planning purposes.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the single storey side extension was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR