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Chloe Roberts
Planning Officer

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Appeal Decision

Site visit made on 10 March 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/Q1445/X/19/3233112

31 Welbeck Avenue, Hove BN3 4JP

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S McEwan against the decision of Brighton & Hove City Council.
 - The application Ref. BH2019/01606, dated 3 May 2019, was refused in part by the Council by notice dated 28 June 2019.
 - 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 (i) single storey rear extension; (ii) single storey side extension; (iii) hip-to-gable roof alterations, 2 roof lights to front elevation; (iv) rear dormer; alterations to the porch and revised fenestration.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposal from the application form, with the addition of the alterations to the porch and revised fenestration. The latter were added at the request of the appellant and were included in the Planning Statement dated June 2019 which is listed on the decision notice as one of the documents that was considered. It is also clear from the submitted drawings that alterations to the windows were proposed and the Council indicated in its delegated report that the replacement of the existing windows with dark coloured aluminium framed windows would need planning permission.
3. The Council issued a split decision, granting a certificate for the alterations to the porch but refusing to grant a certificate for the single storey extensions and the proposed roofworks. Although listed in the description of the proposed development, the certificate does not include the revised fenestration, and therefore this element is deemed to have been refused.
4. The appellant is concerned that the Council's decision notice does not make reference to the proposed rooflights in the front elevation. Although it states that the rooflights would be permitted development, the Council considered that it would not be appropriate to grant a certificate for them as the loft conversion needs planning permission. The roof lights are also therefore deemed to have been refused.

5. At the time of my site visit, some of the windows in the house had been replaced with black or dark framed windows, which appeared to be aluminium. Older windows were still evident on the house, some of which had white UPVC frames and others had white painted frames. The works to convert the loft and extend the roof were well advanced.
6. Prior approval¹ has been granted for a single storey rear extension to infill the gap between an original rear 2-storey outrigger with a single storey rear lean-to element and the boundary with the adjoining property. The current proposal shows that part of the lean-to would be retained and a side extension added, which would be connected at eaves level to the previously approved extension. However, the lean-to has been demolished, and footings have been built for the side and rear extension as one structure. There therefore appears to have been some deviation from the submitted plans.

Reasons

7. 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. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. The appellant's case is that the proposals are permitted development as a result of the rights set out in the GPDO².
8. The Council refused to grant the certificate for the single storey side and rear extensions, on the grounds that the proposal involves the replacement of the original rear lean-to and creates a single enlargement that wraps around the side and rear of the original dwellinghouse, thereby exceeding the limitations in the GPDO. It also considered that this single storey extension comprising the side and rear elements, and the proposed roof works, included fenestration that did not match that of the original dwellinghouse, and hence were not permitted development. Although not included on the decision notice, the Council's delegated report and appeal statement both indicate that the revised fenestration within the existing dwellinghouse does not benefit from permitted development rights under Class A because the material would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

Revised fenestration to the existing house

9. Class A Part 1 Schedule 2 of the GPDO gives planning permission for the enlargement, improvement or other alteration of a dwellinghouse. It is subject to the condition A.3(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Thus, in order to be permitted development the works would need to comply with the condition.
10. In this context, 'existing' means the building as it existed immediately before the works are undertaken. There is no dispute between the parties that the house, as it stood before the works the subject of the appeal were commenced, had white UPVC window frames and white painted window frames.

¹ Ref BH2019/00119

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

11. The proposal includes limited information on the replacement windows, although the submitted drawings indicate that the proportions would be different and the Planning Statement indicates that dark aluminium frames are proposed. The replacement windows that have already been installed in the existing house have dark coloured aluminium frames that are of a different thickness, material and colour to the existing ones and as a result they do not have a similar appearance.
12. Based on the evidence before me, I conclude that the material used for the revised fenestration is not of a similar appearance to the existing windows, and therefore does not comply with condition A.3(a).
13. The appellant argues that the replacement windows in the existing house are permitted development as the material (aluminium) is similar to UPVC and they can be painted a dark colour under Class C Part 2 Schedule 2 of the GPDO which gives planning permission for exterior painting. However, the proposal does not involve the painting of existing window frames, but the installation of new windows, and therefore does not fall within the remit of Class C.
14. I therefore conclude that the revised fenestration is not permitted development and express planning permission is therefore required for these works.

Roof alterations

15. Class B gives permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. It is subject to condition B.2(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Thus, in order to be permitted development the works would need to comply with these conditions. Dark aluminium framed windows have been installed in the loft conversion, and for the reasons previously set out they are not of a similar appearance to the white UPVC and white painted windows in the existing house. The roof alterations therefore do not comply with condition B.2(a) and express planning permission is therefore required for the works.

Single storey extensions

16. The house is semi-detached and was built with a single storey lean-to which projected from part of the rear elevation of the house and was approximately half the width of the main building.
17. The Council argues that as the original lean-to has now been demolished, the extension is therefore now a wraparound extension that extends beyond the rear elevation of the original dwelling by 5.1 metres. However, in Article 2 Interpretation (1), 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. There is no dispute between the parties that the lean-to was part of the original building. It is evident from the submitted drawings and from what I observed on site that the rear extension as built does not extend beyond the rear of the original dwelling, being the rear wall of the now demolished lean-to.
18. However, it is also clear that even if the original lean-to had been retained, the works would result in the rear element of the extension being connected to the side element, as the eaves of the extension are higher than the eaves of the lean-to. It is made clear in A.1(ja) that any total enlargement should not

exceed the limitation, being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined. As a result, the width of the combined side and rear extension would be more than half of the width of the original house, and would therefore exceed the limitation of Class A.1(j). Therefore, notwithstanding the prior approval that has been granted for much of the rear element of the extension, the single storey side and rear extension would not benefit from permitted development rights under Class A Part 1 Schedule 2 of the GPDO.

19. The windows in the extension would have dark aluminium frames which would not be of a similar appearance to the existing windows. The proposal would not therefore comply with condition A.3(a). For these reasons, express planning permission is required for the extension.

Front roof lights

20. Two rooflights are proposed in the front roof slope. One of them would be entirely within the larger roof that would be created by the hip-to-gable extension. The other would be largely located within the existing roof, but it is not clear whether it could practicably be installed without the roof being extended. While rooflights benefit from permitted development rights under Class C Part 1 Schedule 2 of the GPDO, in this case they form part of the hip-to-gable roof extension, which I have already established would require planning permission. The certificate cannot therefore be issued for the rooflights as they would be at least partially within an extension which requires planning permission, and cannot be severed from it. It would not therefore be possible to issue a split decision granting a certificate for the rooflights.

Conclusion

21. 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 rear extension, single storey side extension, hip-to-gable roof alterations, 2 roof lights to front elevation, rear dormer and revised fenestration, 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.

N Thomas

INSPECTOR

Appeal Decisions

Site visit made on 20 October 2015

by Mr N P Freeman BS(Hons) DipTP MRTPI DMS

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

Decision date: 27 October 2015

Appeal A: APP/T5150/X/15/3002207

93 Beaumont Avenue, Wembley, Middlesex, HA0 3BY

- 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 A Hakda against the decision of the Council of the London Borough of Brent.
 - The application Ref. 14/3436, dated 1 September 2014, was refused by notice dated 27 October 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 LDC was sought as so described on the application form is "demolition of single storey rear extension, single storey side infill and roof enlargements, making all good, then following demolition, enlargements to rear, side and roof shown on 9 plans".
-

Appeal B: APP/T5150/X/15/3009744

93 Beaumont Avenue, Wembley, Middlesex, HA0 3BY

- 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 A Hakda against the decision of the Council of the London Borough of Brent.
 - The application Ref. 15/0163, dated 16 January 2015, was refused by notice dated 13 March 2015.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a LDC is sought is not specified on the application form. The Council's decision notice describes it as "the demolition of existing single storey infill and the construction of a new single storey side infill extension. The same wording is used to describe the proposal on the appeal form".
-

Procedural matters

1. The Council's Delegated Report on application 14/3436 (Appeal A) states¹ that the infill extension was removed from the proposal following discussion with the applicant. The description of the proposed development on the relevant decision notice states "proposed demolition of existing single storey rear

¹ Page 2 – Remarks – 2nd paragraph

extension, single storey side infill and rear dormer extension with replacement single storey rear extension and rear dormer roof extension to dwellinghouse” which does exclude the replacement infill extension. I will deal with Appeal A on this basis. Appeal B deals separately with the infill extension.

2. The first bullet point of reason for refusal of 14/3436 refers to the proposal being contrary to an existing enforcement notice² and the third line contains the word “not” twice. It would seem that the second “not” is a mistake as it leads to a double negative that does not make sense. I take it that the phrase in question should have read “and the submission does not confirm that the enforcement notice will be complied with....” which is consistent with the argument in the Council’s statement.
3. Paragraph 5.1 of the Council’s statement on Appeal A argues that a LDC can only be granted for all of the development described in the application if found to be lawful and not parts. This is incorrect. Section 193(4)(b) indicates that where an application specifies two or more uses, operations or other matters, a certificate may be issued for all or some of the elements of the development so described. As a consequence it would be possible to grant a certificate for one element, such as the dormer, but not for the others depending on whether the various elements were found to be lawful.

Reasons

4. I have had regard to the previous Inspector’s appeal decisions, dated 26 September 2013 concerning earlier enforcement appeals³, in particular paragraphs 11-17. The appellant (Mr Hakda) argued at that time that the front porch (now predominantly demolished) and rear dormer (still existing) were ‘permitted development’ under the rights conveyed by The Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended. The Inspector was not persuaded that this was so as no evidence had been produced to support the claim that the works were undertaken when the property was in use as a one dwelling. He went on to analyse the information he did have before him including the Design and Access Statement, dated June 2013, which was submitted in respect of the change of use to two flats and a maisonette and the existing and proposed plans supplied at that time. From these he found that the existing plans did not show the dormer window, ‘wraparound’ single storey extension or front porch but the proposed plans did. From this evidence he concluded that on balance that the works to extend the property were to facilitate the use of the property as 3 flats.
5. He also considered grounds (a), (f) and (g) but there was no success on these grounds with the exception of a variation under ground (f) to only require the cessation of the use as self-contained flats and not the requirement to use the property as only one dwellinghouse which he found to be excessive. The enforcement notices were upheld with this variation to Notice E/13/0198. As well as the requirement to cease the use as flats the other requirements taken together concerned the demolition of the unauthorised extensions and an outbuilding in the rear garden⁴ and the removal of all kitchens except one and all bathrooms except two and all items, materials and debris arising therefrom.

² In fact two notices – LPA refs. E/13/0198 & E/12/0619 which were the subject of dismissed appeals – Appeal Decisions document on both dated 24 September 2013

³ Appeal Refs. APP/T5150/C/13/2199461 & APP/T5150/C/13/2191689

⁴ I observed that this outbuilding had been demolished with the exception of the slab

6. What can be gleaned from this background is that the property was converted to flats without planning permission and the extensions, which are the subject of these appeals with the exception of the porch, were added to facilitate this use. The basic argument advanced for the appellant, upon which all the other arguments put forward depend, is that because the property has now reverted to use as a dwellinghouse, as so defined in the GPDO, the development "proposed" would therefore be 'permitted development' and lawful. So the first and foremost consideration is whether this has actually happened and if so whether that entitles the appellant to rely on permitted development rights.
7. An unsworn witness statement has been provided by Mr Hakda dated 7 November 2014. In his statement he says that following the upholding of the notices the flat tenants' leases expired in March 2014 and they were then required to move out. He states that the building was then converted back to a single dwellinghouse and the Council were informed of this on 30 April 2014. He then goes on to say that the house is rented out to tenants who have no access to the loft floor or the side and rear extensions and that the suggestion of a Council officer, Mr Davies, that he would simply convert the house back to flats or use it as a large House in Multiple Occupation (HMO) is untrue. The statement continues with reference to other matters concerning compliance with the requirements of the notice and visits by Mr Davies.
8. On my inspection I noted that the 2 main rooms at the loft/second floor level appeared disused and a toilet and washbasin in a small separate cubicle remain on this floor. The rear single storey extension contained stored household furniture. Part of the infill or side extension contains a toilet and shower cubicle. In terms of the rest of the property this appeared to be in use as living accommodation. On the ground floor there was a double bedroom in the front room, a kitchen behind and lounge at the rear. These uses differ in some respects from those annotated on the proposed plan Drg.No. 93-02a which shows no bedroom on this floor. The first floor was in use as 3 double bedrooms with the one at the front containing some lounge furniture which suggests it may be in use as some sort of bedsitting room. There is also a bathroom on this floor.
9. The impression I gained from what I saw is that the house is multiple occupation and not being used as a dwellinghouse. As to who may be living there no tenancy agreement has been provided to show that it is let under a single tenancy which would be consistent with a claim that it has reverted to use as a single dwellinghouse. In the appellant's statement he uses the word tenants in the plural. I appreciate that this could refer to a couple (married or partners) or one family but there is nothing to corroborate this. I consider this to be odd as if it had genuinely been brought back into use as a dwellinghouse it would have been simple to have provided the details of who the occupants are, their relationship, if any, and the nature of the tenancy.
10. I am mindful of the case of *F W Gabbitts v SSE and Newham LBC [1985] JPL 630* which remains good authority for the finding that if a local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the application for an LDC. Nevertheless, the onus of proof in an LDC case rests firmly upon the applicant and the relevant test is to show that the claim is made out on the balance of probability. From what is before me and my own observations I do not accept that it has been shown on

the balance of probability that the property has actually been reinstated and reverted to use as a dwellinghouse following its unauthorised use as flats. I appreciate that Notice E/13/0198 as varied does not require this to happen but it is essential if the claimed rights to construct the proposed extensions are to be relied upon. This being the case I am not persuaded that the appellant can rely on 'permitted development' rights which only apply to dwellinghouses to support a claim of lawfulness for the proposed extensions.

11. The Council have emphasised their belief that the development in both appeals cannot be lawful unless the enforcement notices are first complied with in every respect. They cite Section 191(2)(b) in support of this argument but as the appellant's agent argues this comes under the heading of existing uses and development. Having said that taking the actual wording of s191(2) it states "For the purposes of this Act uses and operations are lawful if:- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force". As this test is said to apply for the purposes of the Act and not just s191 it could be taken as applying to proposed development under s192 as well. I appreciate the logic that it would seem unfair and unreasonable to require extensions to be knocked down because that is what is required by an enforcement notice if they could then simply be rebuilt as permitted development in a slightly modified fashion. Nevertheless that begs the question as to whether in this case this is possible and for the reasons given above I consider it is not.
12. I have noted that the wording of the proposals in both appeals is to actually demolish all the extensions which are the subject of the extant enforcement notices "and make good" before erecting the new extensions which would be only marginally different as regards the single storey rear extension⁵. The proposed plan for the dormer shows this with a face set back 200mm from the edge of the eaves which is a condition [B.2(b)] of Class B of Part 1 of Schedule 2 of the relevant GPDO. I could not accurately measure the present set back of the face but it may possibly be 200mm from the edge of the eaves as existing. The details of the existing and proposed infill extensions appear from the plans to be the same.
13. In these circumstances, given the relatively minor differences between the existing and proposed extensions it seems hardly credible given the costs involved that the appellant would chose to knock down the existing extensions in their entirety only to then rebuild them in a marginally different form. The Council could as suggested by the agent exercise their powers under s173A of the Act to waive or relax any requirement of the notice to allow for what he asserts is a legitimate 'fallback' position based on the claimed lawfulness of the proposed extensions. However, they are not obliged to do so and this is not an enforcement appeal where ground (f) could be argued. Without doing so the notice still bites and demolition is required. In these circumstances the appellant could not simply retain the majority of the fabric of the existing extensions and make the relatively minor alterations to create the proposed extensions which are asserted as being lawful. It is not for me to gainsay the wording of the applications to firstly demolish and then rebuild the extensions but the circumstances suggest to me that this is certainly questionable given the expense that would be incurred. Be that as it may, this observation is not essential to my decision which is reached for other reasons set out above.

⁵ According to the plans reduced in depth from 3.11m to 2.9m

14. Bringing these points together, it has not been shown on the balance of probability that the property had reverted to use as a dwellinghouse from the previous unauthorised use as flats on the dates that the LDC applications were made. As a consequence the permitted development rights advanced to support the claim that the proposed development is lawful cannot be relied upon as they only apply to premises in use as a dwellinghouse. For this reason it is unnecessary to go on to consider the detail of the particular parts of the Class A and Class B of Part 2 of Schedule 2 of the GPDO relied upon as they do not assist the appellant.
15. I conclude that the Council's refusal to grant the LDCs in respect of the matters described in the applications was well-founded and that the appeals should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended⁶.

Decisions:

Appeal A: APP/T5150/X/15/3002207

16. The appeal is dismissed.

Appeal B: APP/T5150/X/15/3009744

17. The appeal is dismissed.

N P Freeman

INSPECTOR

⁶ Although I have not agreed with all the arguments advanced by the Council the legal test under s195(3) is whether the refusal, and not necessarily the reasoning, was well-founded. I have concluded that this is so for the reasons set out

Appeal Decision

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 8 July 2016

Appeal ref: APP/H5960/X/16/3142277
194 Putney Bridge Road, London, SW15 2NG

- 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 lawful development certificate (LDC) by the Council of the London Borough of Wandsworth.
- The appeal is made by Mr Raymond Walker.
- The application Ref 2015/3647 dated 20 April 2015 and validated on 6 August 2015 was refused by notice dated 18 September 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The operations for which a lawful development certificate is sought are described in the application as "Whole property is currently a dwelling house – domestic use only. Lawful development certificate required for a single storey extension to the rear of the property which will continue to be used as a dwellinghouse" and, in the Council's Notice of Refusal, as "erection of single-storey rear extension".

Summary of decision: The appeal is allowed and a LDC is granted.

Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The onus of proof in an application for a LDC rests with the appellant, the relevant test of the evidence being the balance of probability.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Discussion

4. Bearing in mind the matters involved in the appeal the parties agreed that a formal site inspection was unnecessary. However, I understand that No. 194 is a mid-terraced dwelling house located on the northern side of Putney Bridge Road. The property is neither listed nor within a Conservation Area.
5. The Council refused the grant of a LDC for the development proposed in the application as they were not satisfied that the proposal fell within any class of 'permitted development' specified in Schedule 2 to the Town and Country

Planning (General Permitted Development) Order 2015. However, in the Informative following the Reasons for the Decision, the Council explained the reasoning underlying their decision, namely that the proposed rear extension would fail to comply with A.1(f)(i) of Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015" (the Order) "by way of the proposed depth of the extension, when measured from the two-storey rear addition, being greater than 3m. The depth is measured from the two-storey rear addition, as a substantial part of the existing single storey element is being demolished."

6. There appears to be no dispute that the existing single storey element to which the Council refer was part of the "original dwellinghouse" for the purposes of the Order and that, if it were included for the purposes of calculating the depth of the proposed extension, that extension would have been less than three metres in depth. However, the Council discounted the depth of the existing single storey element because much of it, including the existing rear wall, is being demolished and rebuilt. Accordingly, they view the scheme as a single concept of an extension that well exceeds the 3m depth permitted under this part of the Order. On the other hand, the appellant believes that this represents an "unauthorised interpretation", arguing that the Order "clearly envisaged the possibility of alterations to an existing building and, for the avoidance of doubt, specified only that the measurement should be taken from the rear wall of the original dwellinghouse."
7. The appellant does not refer to any particular provisions in support of this interpretation: however, he may have had Article 3(9) of the Order in mind. This states that, "except as provided in Classes B and C of part 11, Schedule 2 does not permit any development which requires or involves the demolition of a building, but in this paragraph "building" does not include part of a building". Thus a scheme which, as in this case, requires or involves the demolition of part of a building may nevertheless constitute permitted development under Class A. The Technical Guidance issued by the Department for Communities and Local Government on Permitted Development for Householders states that measurement of the extension beyond the rear wall should be made from the base of the rear wall of the original house to the outer edge of the wall of the extension (not including any guttering or barge boards). Whilst this represents the Government's interpretation of the law, the legislation itself does not reveal any error in that interpretation.
8. Accordingly, on the evidence now available, I conclude that the Council's refusal to grant a lawful development certificate was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal decision

9. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of the proposed operations which are considered to be lawful.

Felix Bourne

Felix Bourne INSPECTOR



Lawful Development Certificate

APPEAL REFERENCE APP/H5960/X/16/3142277

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 20 April 2015 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged *and* hatched in black on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

Felix Bourne

Felix Bourne

INSPECTOR

Date: 8 July 2016

First Schedule

The development was permitted by Article 3 and Class A within Part 1 to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015.

Second Schedule

Land at 194 Putney Bridge Road, London, SW15 2NG

NOTES

1. This certificate is issued solely for the purpose of section 191 or 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations *or* matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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.



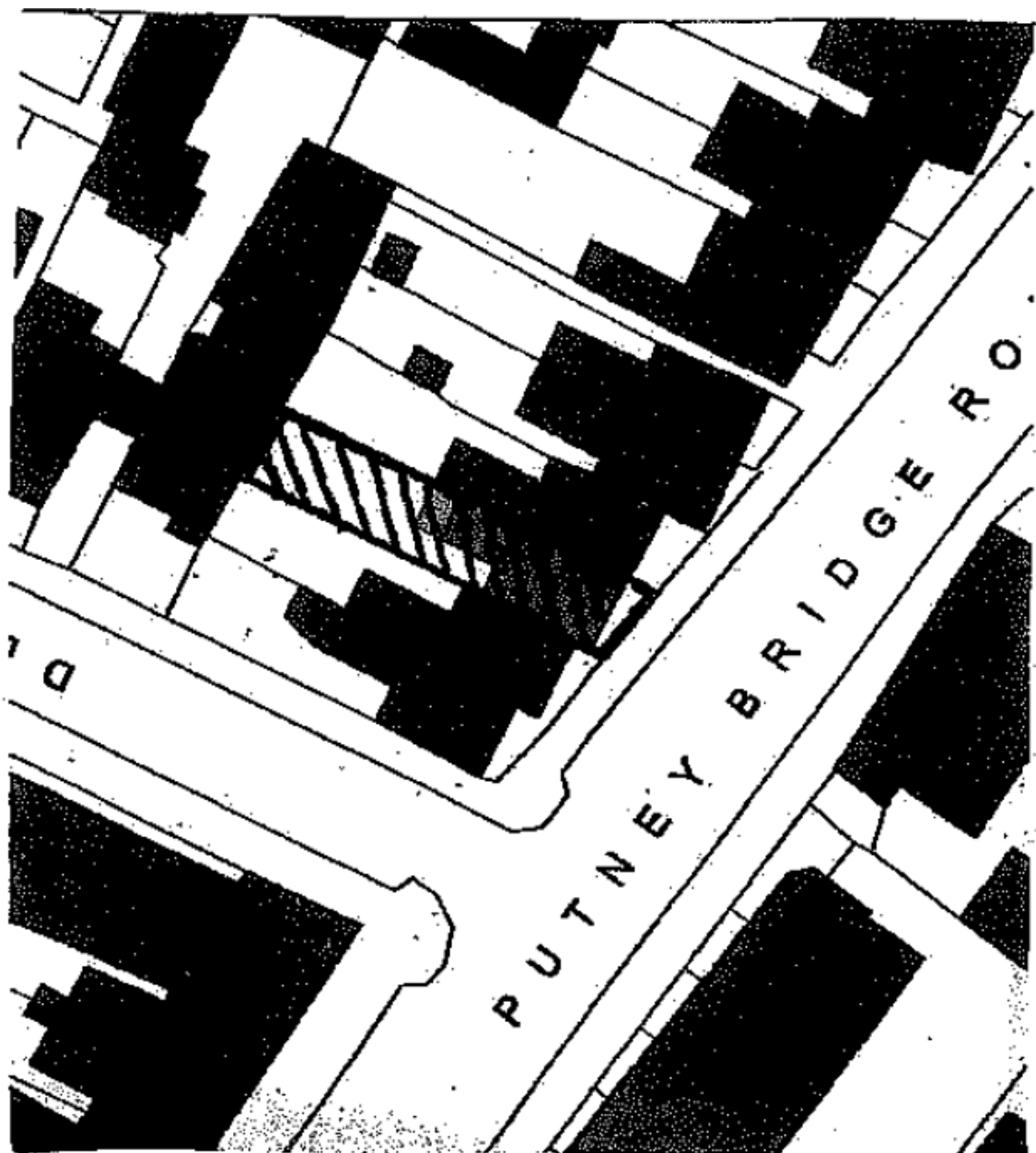
Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 July 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

Land at: 194 Putney Bridge Road, London, SW15 2NG

Appeal ref: APP/H5960/X/16/3142277



Appeal Decision

Site visit made on 27 March 2015

by D Whipps LLB Solicitor LARTPI

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

Decision date: 05 May 2016

Appeal ref: APP/J0405/X/14/2222083

Coppice Cottage, Ringshall, Berkhamsted, HP4 1ND

- 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 Clive Evans against the decision of the Aylesbury Vale District Council.
 - The application Ref 13/01204/ACL dated 3 May 2013 was refused by notice dated 2 July 2013.
 - 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 ground and first floor extension works to the original building as designated and stated in previous communications by Aylesbury Vale District Council.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both parties have made applications for costs which are dealt with in a separate Decision Letter.
 3. A new Town and Country Planning (General Permitted Development) Order came into effect on 15 April 2015 replacing the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO). However, whilst this appeal is being determined after the 2015 Order came into effect, the appeal itself still needs to be determined against the GPDO. This is because the test in section 192(2) is whether the operations would be lawful if instituted at the time of the application. Furthermore, the Council obviously considered the matter under the GPDO and I have to determine whether their decision was well founded.
 4. My decision has been delayed pending proceedings in the Planning Court to which I shall refer in due course. In the light of this delay, I invited the parties to update their representations which has occurred. I shall, therefore, in reaching my decision have regard to all the representations before me.
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Reasons

Background

5. Coppice Cottage is a detached dwellinghouse. There were essentially 3 elements to the property. The main two-storey linear element on a broadly north east/south west axis, a two-storey gabled projection on the front/south east elevation and a single storey element extending across the rear/north west elevation and also wrapping around a small part of the side/north east elevation. This single storey rear/side elevation has been demolished. The property at the time of my site inspection therefore comprised the main linear element, the front gabled projection and a partially erected rear and side extension.
6. The Council in their initial representations questioned whether the single storey rear/side extension was part of the original dwellinghouse, but I do note, that in their letter dated 23 February 2016 the Council do say "The rear lean-to which formed part of the original dwellinghouse". The appellant has also suggested that the Council have now accepted that the rear lean-to element did form part of the original dwellinghouse.
7. For the avoidance of doubt I have in any event considered the matter in light of the evidence before me. Both parties have produced photographs of the property before the demolition occurred. These show that the tiles on the single storey lean-to matched those on the main roof. Further, within the rear elevation there is a dormer window which sits partly within the main roof and partly within the roof to the single storey rear lean-to. I am therefore satisfied on the balance of probabilities that the single storey rear/side element of the property was part of the original dwellinghouse and I shall proceed on that basis.
8. The appellant now proposes to erect a part two-storey/part single storey rear extension and a two-storey side extension. The two-storey elements are on the footprint of what used to exist as single storey extensions. The total depth of the proposed rear extension is approximately 5.75m. Approximately 1.75m of this depth represents in effect a "rebuild or replacement" of the now demolished former single storey rear element and a little under 4m is "new" build. The proposals are shown in more detail on the drawing submitted with the application. It is submitted by the appellant that these proposals as shown on the submitted drawings are permitted development under the GPDO and hence the construction of the extensions would be lawful.
9. Article 3 and Class A of Part 1 to Schedule 2 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse by, amongst other things, both rear and side extensions but in both cases subject to limitations and conditions. The Council contend that various limitations including those in paragraph A.1.(c), A.1.(f), A.1.(h), A.2.(b) and A.2.(c) and potentially paragraph A.1.(e) are breached or not satisfied such that the proposed development would not be permitted development and therefore unlawful. I shall consider each assertion but beforehand need to consider the effect of Article 3(5) of the GPDO.

10. I have to consider matters as at the date of the application to the Council, that is, 3 May 2013. The effect of Article 3(5) is that Schedule 2 does not apply if there are building operations involved in the construction of that building which are unlawful. Building includes any part of a building.
11. At the time of the application the former single storey lean-to extension had been demolished and replaced by a partially completed one and a half and single storey extension. These additions were the subject of a planning application (ref: 11/02400/APP) and subsequent appeal (APP/J0405/C/13/2206029) in which it was found that the rear and side extensions were unlawful for the reasons given therein. This decision was given following a site visit on 5 February 2014 and whilst my site visit was not until 27 March 2015, the unlawful rear and side extensions appeared to still be in situ. On this basis, notwithstanding the assumption between the parties that the application was made on the basis that the unauthorised extensions would be removed, no lawful development certificate could be issued even if I do find that all the various limitations within Class A Part 1 Schedule 2 are met.

Paragraph A.1.(c) - Eaves

12. Paragraph A.1.(c) provides that development is not permitted by Class A if "the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse".
13. The Council contend that the eaves height of the proposed extension on the north east and south west elevations would be higher than the eaves height of the main linear element of the property. This would appear to be the case looking at the submitted drawings. However, there are also clearly eaves on the front projection which is part of the existing dwellinghouse. There is no basis or reason why these eaves should be ignored. These eaves as the Council acknowledge are higher than the proposed new eaves on the north east and south west elevations.
14. Thus the position is that the proposed eaves of the extension will be higher than some but not all of the eaves of existing property. Paragraph A.1.(c) refers to "the eaves" of the existing dwellinghouse and in my judgment this should be interpreted as meaning all the eaves and not merely some of the eaves. Such an interpretation would also be consistent with the Department for Communities and Local Government – Permitted Development for Householders – Technical Guidance (TG). This provides (page 13) "Where the existing house has eaves of different heights, then the restriction on the height of the eaves for the part of the house enlarged, improved or altered is measured against highest level of eaves on the existing house".
15. In addition the Council argue that where the roof slopes and the rear extension meet to form 2 valleys there are further eaves. The appellant says that these are not eaves at all. The TG says (page 11) "the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall". The roof slopes which ultimately join to form the 2 valleys do meet an outside wall but in my judgment they do not form at that point an eave but are merely part of gable ends to the roof structure. I therefore agree with the appellant that there are no eaves at this point.

16. My overall conclusion therefore is that the provisions of paragraph A.1.(c) are satisfied.

Paragraphs A.1.(e) and (f) – Rear Extensions

17. These paragraphs both refer to “the enlarged part of the dwellinghouse”, needing if it is a single storey extension to meet certain criteria or stipulations (paragraph A.1.(e)) and if it is a two-storey extension meeting different stipulations or criteria (paragraph A.1.(f)). It is therefore appropriate to consider before looking at the criteria or stipulations what is meant by the words “the enlarged part of the dwellinghouse”.
18. This was a point considered by the Planning Court in *Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government* [2015] EWHC 2458 (Admin) (RBKC). It was determined in that case that the “enlarged part” is referring to the development permitted under the relevant part of the GPDO and not the whole of the dwellinghouse as enlarged. Whilst I appreciate that this particular case was concerned with the provision of a basement rather than an above ground extension, the Court nevertheless found that there was no distinction to be drawn between storeys above or below ground.
19. I must follow this judicial guidance and as the proposed extension is part two-storey and part single storey, both paragraphs A.1.(e) and A.1.(f) are engaged and need consideration. I have already noted that the first floor element follows the footprint of the now demolished, single storey rear/side extension but as it has been demolished it is now necessary to build a new two-storey element and I must consider matters on this basis.
20. Class A.1.(f) provides, amongst other things, that development is not permitted if “the enlarged part of the dwellinghouse would have more than one storey” and “extend beyond the rear wall of the original dwellinghouse by more than 3m”.
21. A part of the enlarged part of the dwellinghouse would clearly have more than one storey and whilst the two storey element would not extend beyond the rear wall of the original dwellinghouse I do not consider it appropriate to consider the two storey element in isolation. It is proposed to erect both a two-storey and a single storey extension at the rear of the property. They are clearly one building project. The enlarged part of the dwellinghouse is therefore both elements and they extend beyond the rear wall of the original dwellinghouse by more than 3m. Indeed, even the single storey element exceeds this element. The limitation in paragraph A.1.(f) is not, therefore, satisfied.
22. Turning to paragraph A.1.(e) this provides, amongst other things, that the development is not permitted if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4m or exceed 4m in height.
23. Again, a part of the enlarged part of the dwellinghouse would be single storey but it does not theoretically extend more than 4m beyond the rear wall of the original dwelling. I deliberately say theoretically because of course the rear wall no longer exists. The question is whether this is critical. I have to give the ordinary meaning to the words in the GPDO in a broad and commonsense

manner. This paragraph is not qualified by the use of such words as "existing" or "remaining" and I see no justification for implying such a qualification.

24. I do not see this interpretation will allow piggy-backing or incremental development to any significant extent. The baseline remains the same, namely that the starting point is the original dwellinghouse. It merely means that in these particular circumstances where an element has been demolished it may potentially be replaced as permitted development and thereafter further extensions added. However, as explained above the enlarged part of the dwellinghouse would not be only single storey but part-single storey and part two-storey. Again, therefore, the limitation in paragraph A.1.(e) is not satisfied.
25. The Council also draw to my attention that the single storey element as proposed is at least 4.5m in height but certainly exceeds the 4m limitation. This has not been expressly disputed by the appellant and the appellant's explanation is that any increase in height above 4m is purely down to the natural ground level having been lowered. Indeed, I saw at my site visit that substantial regrading of the land to the rear of the property has occurred.
26. The appellant draws to my attention article 1(3) of the GPDO which so far as relevant provides that "ground level" means the level of the surface of the ground immediately adjacent to the building and would not, therefore, include any addition laid on top of the natural ground. It is then suggested that it would be perverse to penalise land owners by measuring ground level from a point lower than the natural ground level simply because soil had been excavated immediately adjacent to the building.
27. I do not agree. Paragraph A.1.(e) is clear. The enlarged part must not exceed 4m in height. I see no logic or basis for interpreting this as saying one should ignore any ground lowering exercise that has occurred. Moreover, whilst it is difficult to determine to what extent the ground has been lowered, it would appear to be in the order of around 50cm or more over a moderate area. This would, of itself, constitute an engineering operation which would not be permitted development. An engineering operation is nevertheless an essential or integral part of the overall development proposal.
28. The proposed development does not, therefore, satisfy the requirements within paragraph A.1.(e).

Paragraph A.1.(h) – Side Extension

29. Paragraph A.1.(h) provides that 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 house and would exceed 4m in height, have more than one storey or have a width greater than half the width of the original dwellinghouse.
30. As previously mentioned, the original dwellinghouse did have a small side extension which to all intents and purposes was part of the rear single storey element which of course has now been demolished. The proposal before me in essence, therefore, is the construction of a two-storey side extension. There is no implied or inherent right to rebuild the demolished element without the grant of planning permission in some format. Whilst planning permission for

many extensions is granted by the GPDO, this particular side extension would not be permitted development simply because it comprises more than one storey. In any event the proposed side extension is more than 4m in height. The limitation in paragraph A.1.(h) is not, therefore, satisfied.

Limitation A.2.(b)

31. This limitation provides that in respect of a dwellinghouse on article 1(5) 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".
32. Coppice Cottage is within the Chilterns Area of Outstanding Natural Beauty. It is, therefore, on article 1(5) land. A side extension is proposed but it does not as a matter of fact extend beyond a wall forming a side elevation of the original dwellinghouse albeit that the original side wall has been demolished. I, therefore, find that this limitation is satisfied.

Limitation A.2.(c)

33. This limitation provides that in respect of a dwellinghouse on article 1(5) land development is not permitted if "the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse".
34. I am assisted here by the Planning Court Judgment in *Evans v The Secretary of State for Communities and Local Government* [2014] EWHC4111 (Admin). At paragraph 24 it is stated "The effect of paragraph A.2.(c) is that, in the case of a dwellinghouse on article 1(5) land, an extension of more than one storey which extends beyond the rear wall of the original dwellinghouse being part of the wall immediately adjacent to the extension at the same vertical level as the extension is not permitted development". Such an interpretation is also consistent with the TG (page 30) "an extension from a rear wall is not permitted development if it results in an enlarged area of the house that has more than one storey". Moreover, this conclusion is not inconsistent with the Court's findings in RBKC when looking at "the enlarged part". It must always be remembered as previously mentioned on several occasions that the original ground floor element has been demolished and what is proposed is a part two-storey extension.

Conclusion

35. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of works to the original building as designated and stated in previous communications by Aylesbury Vale District Council was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.
36. The appeal is dismissed.

D Whipps

INSPECTOR

Appeal Decision

Site visit made on 11 November 2015

by George Mapson DipTP DipLD MRTPI

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

Decision date: 25 November 2015

Appeal Ref: APP/U5360/X/15/3006743

60 Southborough Road, London, E9 7EE

- 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 Barry Gately against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2014/4224, dated 29 December 2014, was refused by a notice dated 18 February 2015.
 - 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 the proposed erection of a "*single storey ground floor rear extension*".
-

Summary of 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 considered to be lawful.

Background

The appeal site

2. The appeal property is a three storey, mid-terrace Victorian house which lies on the southern side of Southborough Road, within the designated Victoria Park Conservation Area. The appearance of the front of the building is largely unaltered, but at the rear there have been some alterations and additions.

Planning history

3. In 1984 planning permission was granted for development described as "*alterations to the back addition*". The works entailed the replacement of the flat roof of an existing single storey outshot with a monopitch roof with rooflights, and the erection of a first floor extension above part of that outshot to create a bathroom. The Council refers to this addition as a 'closet wing rear extension'.

The proposed development

4. The development for which the LDC is sought is the proposed erection of a rectangular, single storey, ground floor, rear extension which would occupy the full width of the plot. It would project 3m from the rear wall of the existing single and two storey outshots and would have a monopitch roof that would extend over the existing kitchen.
5. The new roof would rise from about 2.4m, at eaves level, to 4m where it meets the wall of the house just below the cill of the first floor, rear-facing window. The works

would be carried out using London Stock bricks and natural roof slates to match the existing materials of the house.

Evidence in LDC cases

6. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
7. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal.
8. The burden of proof regarding decisive matters of fact rests on the appellant. He has asserted that the development would be lawful and thus immune from enforcement action. He must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).

Main issue

9. An LDC appeal is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well-founded.

Reasons

The Council's position

10. The Council refused to grant a certificate because it was not satisfied that the information submitted with the application was sufficiently precise and unambiguous to demonstrate on the balance of probability, that the existing rear extension represents part of the original dwellinghouse for the purposes of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)¹ [the GPDO].
11. For that reason, the Council took the view that the proposed development would not constitute permitted development as defined by Schedule 2, Part 1, Class A of the GPDO.

The appellant's position

12. The gist of the appellant's case is that the existing rear extension represents part of the original dwellinghouse for the purposes of the GPDO. He has provided supporting documentary evidence, in the form of Ordnance Survey [OS] maps of 1916 and 1948; several planning application drawings (from the Council's records) for the appeal property and other neighbouring houses; and an LDC granted by the Council in July 2011 in respect of a proposed single storey rear extension at 6 Banbury Road, London.

Interpretation of 'original dwellinghouse' for GPDO purposes

13. The meaning of 'original dwellinghouse' is provided by the GPDO and summarised in the DCLG document "*Permitted Development for householders – Technical Guidance*". Put simply, 'original' means a building as it existed on 1 July 1948 - where it was built before that date - and as it was built when built after that date.
14. A complication can arise where part of an original dwellinghouse has been demolished and subsequently rebuilt. The Council asserts that this might have occurred here. The Council's Delegated Report of 18 February 2015 states that "*it appears that the*

¹ On 15 April 2015 the 1995 version of the GPDO, as amended, was replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the 1995 GPDO (as amended) was extant when the LDC application was submitted and the Council's decision was made.

existing single storey and closet wing rear additions are not part of the original dwellinghouse due to their architectural design features and materials which are not consistence(sic) with the original building and other buildings in the streetscene."

15. In cases where some rebuilding or remodeling of parts of a house has taken place, it is customary to regard the footprint (the ground area) of the 'original dwellinghouse' as the appropriate starting point for considering whether the proposed works would be permitted by Class A. I return to this matter at paragraph 22 below.

My assessment of the evidence

16. The nub of the issue, therefore, is whether the existing single storey outshot is part of the original dwellinghouse for GPDO purposes.
17. No. 60 Southborough Road and the immediately adjoining houses on the southern side of the road have a depth of about 11 metres (measured from the main front wall of the house to the rear wall of the single storey outshot). These houses have a flat back wall, rather than an indented or staggered back wall.
18. The Council has no provided evidence to demonstrate that the line of the rear wall of this house has changed. The OS maps of 1916 and 1948 show a straight line (i.e., a flat back wall) across the rear of the houses on the southern side of Southborough Road. The exceptions to this are the houses at Nos. 22 and 24, which have an indented or stepped rear profile. This is shown on the conveyance plan of 1884 and the OS map on 1948.
19. Houses built on the nearby Banbury Road in 1865 (for the same landowner, at that time, as the houses on Southborough Road) are also shown on the OS maps with a flat back wall and a building depth of 11m.
20. The maps show that on the northern side of the road, and in some neighbouring streets, there are individual variations in building outlines. Some houses have indented or stepped back walls. I am satisfied, on the balance of probability, that the OS maps depict accurately the shape, size and positions of the buildings at those times.
21. Although the Council contends that the evidence provided by the OS maps is insufficiently precise and unambiguous, I share the appellant's view that in the absence of contrary evidence from the Council, these maps provide the most consistent and reliable information that is available.
22. As regards the possible rebuilding or remodeling of parts of the house, the planning application (Ref. 11/9005), made in September 1983 and granted permission in January 1984, was for a proposed rear extension at first floor level at No. 60 Southborough Road. This is the only planning application made for development at the appeal property. The plan shows that the extension was to be built above the existing ground floor rear outshot. There is nothing in the application to suggest that any part of the building had been, or was to be, demolished and rebuilt.
23. A covering letter states that other houses in the terrace from No. 58 to No. 78 (even) were originally in the form shown on the floor plans as existing (i.e., they all had similar ground floor rear outshots).
24. The Council's delegated report, date stamped 12 January 1984, states that investigations were made regarding the single storey outshots at Nos. 56-72 Southborough Road inclusive and it was found that there had been no planning permissions for any of them. This suggests to me that they were built as part of the original dwelling houses and were not later additions.
25. The appellant has submitted several planning application plans, taken from the Council's records, for the properties at Nos. 56, 66-68, 70, 72 and 74 Southborough

Road. These plans support the appellant's claim that the single storey outshots at the rear of these properties were part of the original dwellinghouse.

26. The appellant says that the houses along this stretch of Southborough Road were built in 1864 and leased for terms of 60 to 80 years (i.e., until 1924 to 1944). This would have prevented unilateral changes to the houses throughout that period, and has resulted in no changes taking place to the shape of the houses before 1 July 1948. Although inclusive, they add weight to the appellant's claim that the existing single storey outshot should be regarded as part of the original dwellinghouse for GPDO purposes.

Conclusions

27. I am satisfied that the appellant has proved his case. He has adduced sufficient relevant, clear and unambiguous evidence to demonstrate, on the balance of probability, that at the date of the application the proposed extension would have been development permitted by Class A in Part 1 of Schedule 2 of the GPDO, and would therefore have been lawful.
28. I find that the Council's refusal to grant an LDC was not well-founded and accordingly, the appeal succeeds.

Formal decision

29. For the reasons given above, in exercise of the power in section 195(2) of the 1990 Act, as amended, which has been transferred to me, I hereby allow the appeal and grant a lawful development certificate for the proposed erection of a single storey ground floor rear extension at 60 Southborough Road, London, E9 7EE. A certificate to this effect is attached to this letter.

George Mapson

INSPECTOR

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 29 December 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan (Plan 1) attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed extension would have been development permitted by Class A in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Signed

George Mapson

INSPECTOR

Date: 25 November 2015

Reference: APP/U5360/X/15/3006743

First Schedule

The proposed erection of a single storey ground floor rear extension.

Second Schedule

Land at 60 Southborough Road, London, E9 7EE.

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 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, 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 operations described in the First Schedule and identified on the attached plan 2, and to the land specified in the Second Schedule and identified on the attached plan 1. Any 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 operation is only conclusively presumed where there has been no material change before the operations begin, in any of the matters which were relevant to the decision about lawfulness.

Plan 1

This is the first plan referred to in the Lawful Development Certificate dated: 25 November 2015

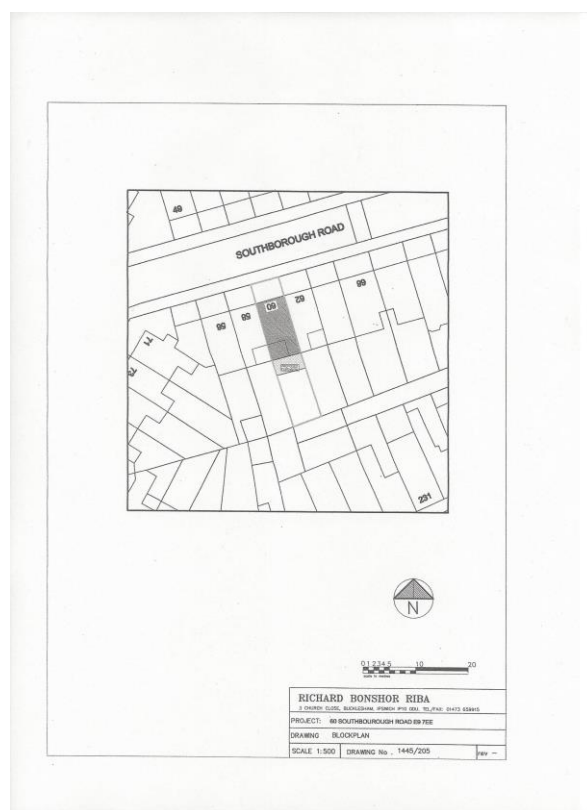
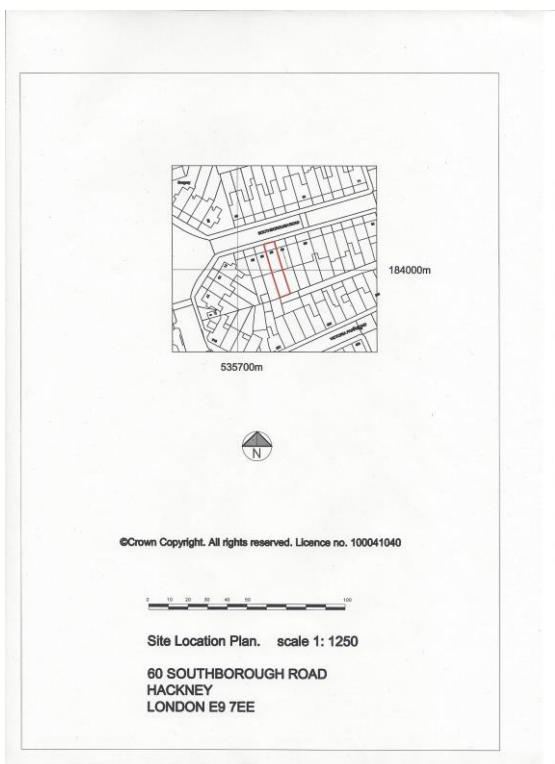
by **George Mapson DipTP DipLD MRTPI**

Land at: 60 Southborough Road, London, E9 7EE

Reference: APP/U5360/X/15/3006743

Scale: NTS

Application Ref 2014/4224 Site Location Plan and Block Plan



George Mapson

INSPECTOR

Plan 2

This is the second plan referred to in the Lawful Development Certificate dated:
25 November 2015

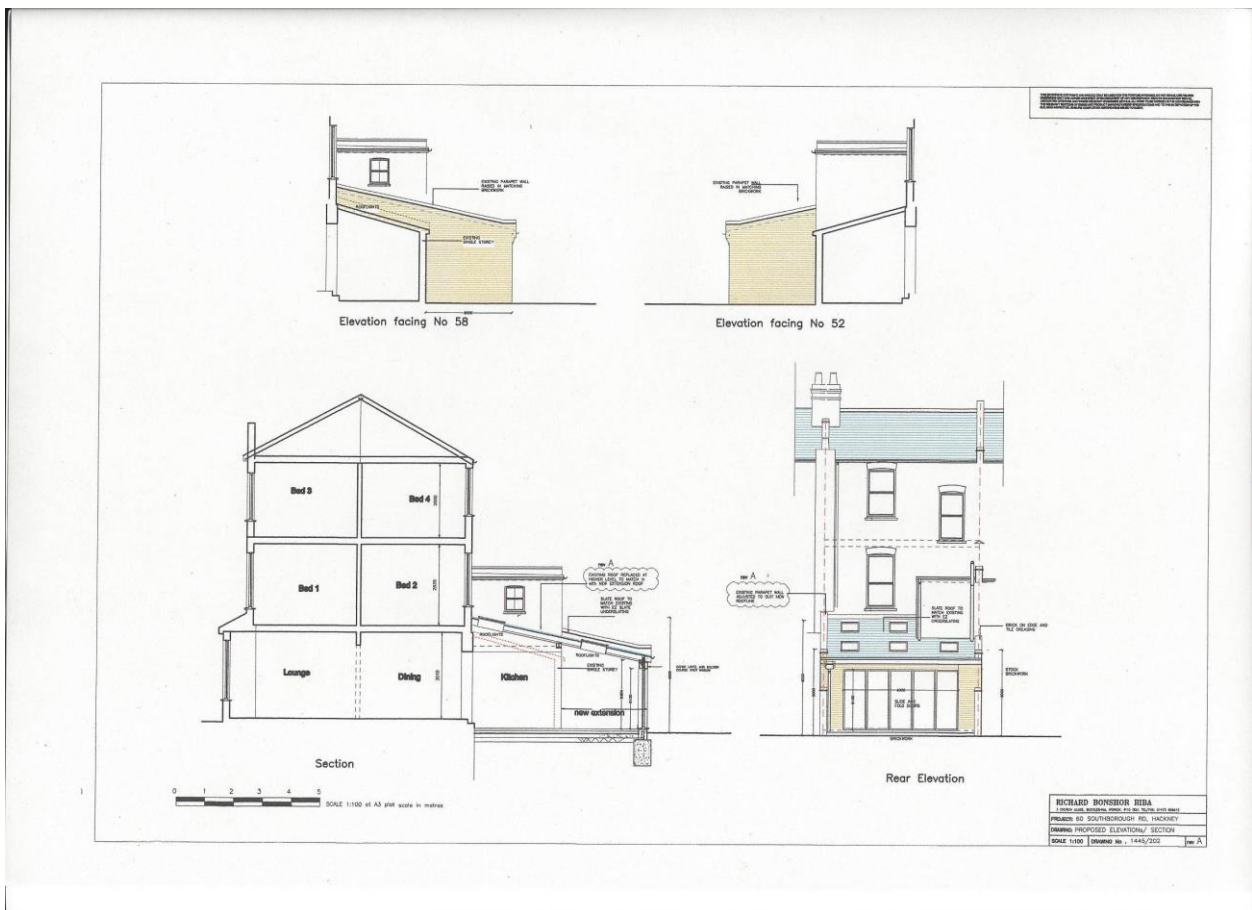
by **George Mapson** DipTP DipLD MRTPI

Land at: 60 Southborough Road, London, E9 7EE

Reference: APP/U5360/X/15/3006743

Scale: NTS

Application Ref 2014/4224 Elevations, sections and floor plans (Rev A)



George Mapson

INSPECTOR

Appeal Decision

Site visit made on 25 November 2013

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: 3 December 2013

Appeal Ref: APP/L5810/X/13/2190160

36 Old Deer Park Gardens, Richmond, Surrey, TW9 2TL

- 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 Borja Diaz-Llanos against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 12/3417/ES191, dated 31 October 2012, was refused by notice dated 18 December 2012.
- The application was made under section 191(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 'works to replace the existing (original) s/s rear conservatory with a s/s rear extension have already commenced. The extension works have been only partially completed at the time of submission'.

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.

Preliminary Matters

1. At the time the application was made the development was only partially completed, however, it had been completed by the time of my visit and I will determine the appeal on that basis. The terms of the LDC I will be considering will therefore be 'the replacement of the existing (original) s/s rear conservatory with a s/s rear extension'.
2. The relevant date for the purposes of assessing whether a LDC should be granted under s.191(1)(b) is the date when the works commenced. I do not know when the subject works commenced but it was prior to 31 October 2012, the date of the application. The appeal therefore has to be determined in accordance with the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) as at that date or earlier. The increased length for single storey rear extensions added in A.1(ea) by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order in May 2013¹ therefore do not apply in this appeal.

Reasoning

3. S.59 of the 1990 Act and Article 3(1) of the GPDO grant separate planning permission for the classes of development set out in Schedule 2 to the GPDO

¹ SI 2013/1101

subject to the specified provisions, limitations, exceptions and conditions set out in that Schedule². Part 1 of Schedule 2 to the GPDO specifically relates to development within the curtilage of a dwellinghouse and Class A permits the enlargement, improvement or other alteration of a dwellinghouse subject to a number of specified limitations. Insofar as this appeal is concerned, development is not permitted under Class A if the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse by more than 3 metres.

4. The appeal property is a two storey semi-detached dwelling. It has a two storey original rear extension and in the angle between it and the boundary with the next door property there was an infill rear conservatory. It is common ground between the Parties that the conservatory was demolished and that the now completed replacement structure extends more than 3m as it is some 3.3m deep. The Council accept that the conservatory was part of the original dwellinghouse, however, as the extension comprises the footprint of the conservatory plus the 1.03m addition and the building operation was one single operation, following the judgment in *Garland v MHLG*³, the Council takes the view that the extension has to be considered in its entirety as one operation for the purpose of applying the GPDO and the extension offends A.1(e). The Council also relies on an appeal decision⁴ where an Inspector concluded that where an original projection is removed and replaced by a new larger extension then 'the enlarged part of the dwellinghouse' will be the whole of the new extension'.
5. The Technical Guidance advises⁵ that in order to be permitted development a development must meet all the limitations and conditions under the relevant Class and the *Garland* case established that if any of the limitations, exemptions or provisos of any Class are exceeded, then the whole development is unlawful, not just that element in excess of PD rights. However, it seems to me that both *Garland* and the cited appeal were decided on a different point from that relevant in this appeal, that is, they concerned two separate and severable elements rather than one element carried out as one operation which is the case here.
6. Article 1(2) of the GPDO defines "original" in relation to a building existing on 1 July 1948, as existing on that date and there is no question that the conservatory was part of the original building; therefore its rear wall was the rear wall of the original building and the extended part now erected does not extend beyond 3m from that wall. However, does the original building have to remain in situ for permitted development rights to still be available? It seems to me that what has taken place at No.36 was all one operation which consisted of the incorporation of the footprint of the former conservatory into the new enlargement of the building, and on the strict wording of the GPDO I consider it is unnecessary for the original part of the building to have had to remain in place. I therefore consider that the recently completed single storey rear ground floor extension is permitted development within the relevant terms of the GPDO.

² Article 3(2) of the GPDO

³ [1986] 20 P&CR 93

⁴ APP/D1835/X/2167575

⁵ CLG - Permitted development for householders at page 8

Conclusions

7. 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 replacement of the existing (original) s/s rear conservatory with a s/s rear extension 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

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

Gloria McFarlane

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 October 2012 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is permitted by Article 3 and Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended.

Gloria McFarlane

Inspector

Date 03.12.2013

Reference: APP/L5810/X/13/2190160

First Schedule

The replacement of the existing (original) s/s rear conservatory with a s/s rear extension. Drawings Nos. 11.5827.200.OS; 11.5827.151; 11.5827.152; 11.5827.153; 11.5827.154; 11.5827.1515; 1.5827.156; 1.5827.157; 11.5827.161; 11.5827.162; 11.5827.163; 11.5827.164; and 11.5827.165.

Second Schedule

Land at 36 Old Deer Park Gardens, Richmond, Surrey, TW9 2TL.

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

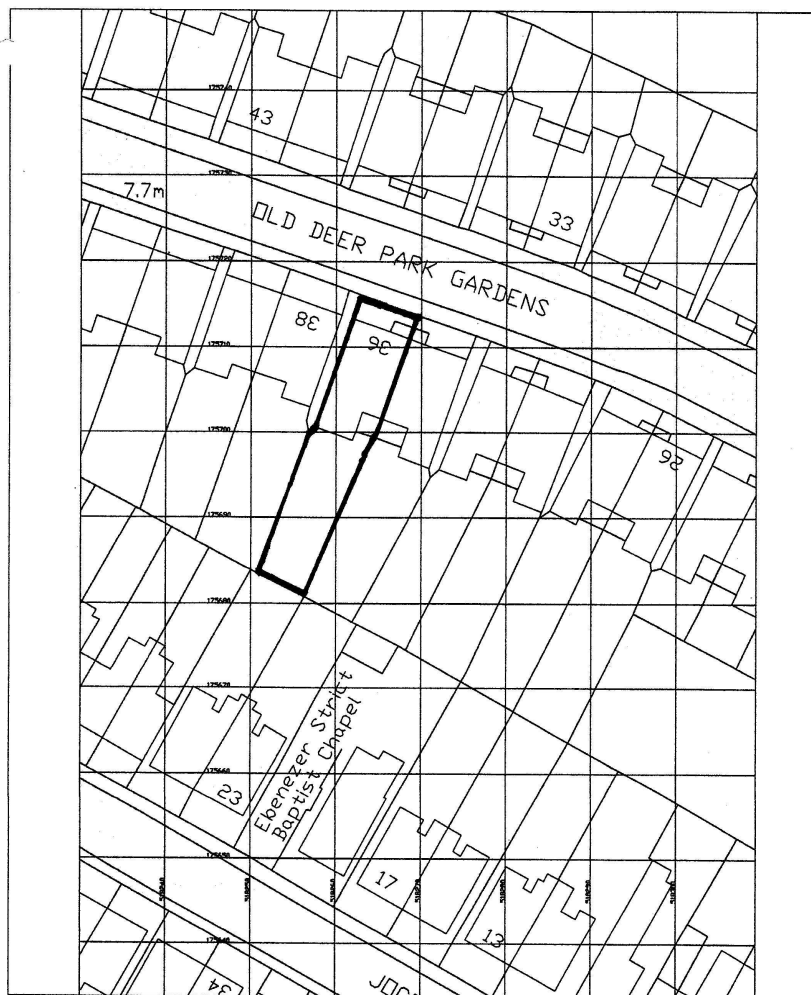
This is the plan referred to in my decision dated: 03.12.2013

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

Appeal Ref: APP/L5810/X/13/2190160

36 Old Deer Park Gardens, Richmond, Surrey, TW9 2TL

Scale: Not to scale





Appeal Decision

Site visit made on 11 May 2010

**by Antony Fussey JP BSc(Hons) DipTP
MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
26 May 2010**

Appeal Ref: APP/H5960/X/09/2118434

53 Chillerton Road, London SW17 9BE

- 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 Ms Karen Joseph against the decision of the Council of the London Borough of Wandsworth.
- The application Ref 2009/3049, dated 6 November (sic)¹ 2009, was refused by notice dated 2 November 2009.
- 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 loft conversion/extension, single storey rear/side extension and a single storey rear outbuilding.

Decision

1. I dismiss the appeal.

Preliminary Matters

2. The grounds of appeal quoted 2 reasons for refusal, although the Council's decision notice had only one, of a different wording. It was later confirmed for the appellant that the text set out in the grounds interpreted and amplified the Council's decision following subsequent correspondence. I have determined the appeal on this basis.
3. Before the application was determined the appellant sought to submit amended plans of the outbuilding to address the Council's contentions in regard to it. However the Council declined to accept them in substitution for those originally submitted. Although an appendix to the grounds of appeal says that they, and certain other plans, should be considered as part of the appeal, I have determined it on the basis of the plans considered and refused by the Council.
4. The appellant's statement contains references to planning merits and a claimed lack of demonstrable harm arising from the development in question, but these matters are not relevant to the consideration of whether it would be lawful or not. It also refers to the proposal as being within the spirit of the Town and Country Planning (General Permitted Development) Order 1995, as amended in 2008 (GPDO). However it is necessary to address the actual wording of the GPDO.

¹ From the documentation provided with the appeal it appears that this was an error, and that the correct date was 6 September 2009

Main Issue

5. The Council accepts that the proposed loft conversion/extension would be permitted development under the terms of Class B of the GPDO. This seems to me to be a correct assessment, and I shall not address this aspect of the proposal any further. Accordingly the main issue is whether the rear extension and outbuilding would constitute permitted development under the appropriate Classes of the GPDO.

The Rear Extension

6. Class A of Part 1 of Schedule 2 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse. One exception is set out in section A.1(e)(i) where *"the enlarged part of the dwellinghouse would have a single storey and 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"*.
7. This semi-detached house already has a rear extension, approved in 1991, projecting some 3.5m beyond the original main rear wall. At the house's south-western corner is a small offshoot, formerly a toilet, which the Council accepts was part of the house in 1948. It juts some 1.6m out beyond the house's original main rear wall, stopping some 1.9m short of the new extension's rear wall. It had been wider, but the extension replaced part of it, leaving a width of about 1.1m. A glazed porch is currently between the offshoot and the line of the newer extension's rear wall. The application involves replacing this porch by a new extension up to the same line, and also extending about 1m southwards, up to the property's side boundary.
8. The appellant does not pursue an argument initially advanced with the Council that the proposal would merely replace the existing porch. Instead it is argued that there are in effect 2 original rear walls, and that the 3m "permitted development zone" is measured from each one, so that the proposed extension would be within the zone in front of the outshoot.
9. The Council argues that a door has replaced an original window in the offshoot's rear wall, and a monopitch has replaced the original flat roof. However this does not indicate to me that the original wall no longer exists; it seems rather to have been altered. In any event, it seems to me that, even if the Council is correct, this does not prevent the original line from being used to assess whether the extension would be permitted development. I see no implication that "original" means "unaltered".
10. I am also not persuaded by the Council's argument that, as the toilet was only accessed from outside, it was not part of the original dwellinghouse, and so its rear wall could not be used as the baseline for assessing permitted development rights. However the "plan as existing" in the 1991 approval clearly shows that the access was at that time from inside. The external door came later, and so the offshoot was indeed part of the original house.
11. It is clear to me that the original house's rear wall was staggered, with the offshoot's rear extending further out than the house's main rear wall. I find no suggestion that section A.1(e)(i) is intended to refer only the rear wall which is set furthest back, regardless of which rear wall is being extended.

Indeed it seems to me that where walls comprising a rear elevation are staggered, the “permitted development zone” is staggered to match.

12. I find support for this view in appeal decision (ref APP/F5540/X/09/2098804) relating to 68 Duke Road, Chiswick, which the Council submitted in support of a different argument (which I address below). That situation also had a staggered rear elevation, and my colleague’s findings were contrary to the Council’s arguments on this point in this appeal. She said *“it seems to me, in accordance with informal guidance, that if the rear of the house has an original rear projection as is the case here, then the house has two rear walls from which enlargements could be built. But what is relevant is the rear wall on the part of the building that is being extended from. Therefore in my opinion the GPDO would permit the enlargement of the dwelling from the rear wall of the original projection for a depth of up to 3m...”*. I have no reason to take a different view on this principle in the appeal before me.
13. The Council granted an LDC for a single storey side and rear extension at 55 Franche Rd, London SW17 on the basis that it was permitted development under Class A. That house also had a staggered rear elevation, with a 2 storey extension occupying just over half the elevation’s width. It was proposed to add two 3m deep single storey extensions, one to the rear of the 2 storey extension and one to the rear of the main dwelling, filling the gap between the existing extension and the side boundary. That original offshoot was wider than the one in the current appeal, but the Council took the view that the 3m should be measured from the rear wall which was being extended from. I note the appellant’s view that section A.1(e)(i) should be interpreted in the same way by the same Council.
14. The Council’s statement introduces what seems to be a new argument in relation to the extension beyond the house’s side wall. It is not wholly clear to me but, as the offshoot’s width is far less than half that of the original house, the exclusion in Class A.1(h)(iii) relating to extensions beyond a side elevation, does not apply. On the basis of the details I have of the Chiswick case, I am not persuaded either that the circumstances there are similar in terms of relationship to the side wall, or that the decision is a precedent for the current appeal. Indeed, I note that the Council subsequently granted an LDC for an extension in this position which, although set back to 3m forward of the original main wall, still extended beyond the side wall. This indicates to me that the Council did not pursue its argument on this point.
15. I conclude on this matter that, as the proposed extension would protrude less than 3m from that part of the house’s original rear wall which would be extended, then it would accord with the provisions of section A.1(e)(i).

The Outbuilding

16. This part of the application concerns an outbuilding, 2.5m high, and adjoining the site’s side and rear boundaries. 5 roof lanterns would extend 300mm above a flat roof; figured dimensions show them 2m from the site boundary but the Council said that the distance scales at less. As I describe below, this distance is not relevant to my consideration, but I note that the plan is endorsed “do not scale”. In any event, figured dimensions have precedence over those produced from scaling if there is any discrepancy.

17. Class E of Part 1 of Schedule 2 of the GPDO permits the provision of domestic outbuildings, with some exceptions. Those relevant to this appeal are paragraphs E.1(d)(ii) and (iii) where *"the height of the building would exceed (ii) 2.5m in the case of a building ... within 2m of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case"*.
18. It is clear to me that this wording means that a building is not permitted development if it comes within 2m of a boundary, and if any part of it is higher than 2.5m. I find no support for the contention that the provision only relates to those parts of the building within the 2m distance. As my colleague found when determining an appeal in Royston (APP/X1925/X/09/2099772), *"as part of the building would exceed 2.5m in height, it would not fulfil the limitation of paragraphs E.1 and E.1(d)(ii) taken together. Nothing in the wording of those paragraphs indicates that the building would comply with the limitation by virtue of the fact that those parts of the building sited on land within the critical 2m-wide criterion would not, in themselves, exceed 2.5m in height. It would be the siting of the building, as being one that would encroach within 2m of the curtilage boundary, which would govern its permitted height"*.
19. The current appeal building would clearly be within 2m of the boundary, and part of it would be higher than 2.5m. Therefore under the terms of paragraph E.1(d)(ii) it would not benefit from permitted development rights.
20. Lambeth LBC granted an LDC for "replacement of an existing outbuilding to the rear garden" at 137 Ferndale Road, London SW4 in 2009, on the basis that the proposal complied with Class E. The details supplied are confusing (with, for example, a reference to the "existing rear elevation of proposed outbuilding"). However the outbuilding would be 2.5m high to its flat roof, and a 0.5m high rooflight would be in the centre of that roof, but not within 2m of any boundary. I agree with the appellant that the GPDO should be interpreted in same way by all Councils, but it seems to me that Wandsworth Council correctly interpreted paragraph E.1(d)(ii).

Conclusions

21. There are 3 elements in the one application. The Council accepts one as permitted development; I have found that another would be permitted development, but that the third is not. However the proposal in its entirety does not fall within the terms of the GPDO and so would not therefore be permitted development. I have no power to issue a "split decision" under section 192.
22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a development comprising a loft conversion/extension, a single storey rear/side extension and a single storey rear outbuilding 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.

Antony Fussey

INSPECTOR

An original rear wall that has been (entirely) removed still forms part of “the rear wall of the original dwellinghouse”.

[Source: May 2010 - Code a00119, Appendix. 1]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “In any event, it seems to me that, even if the Council is correct, this does not prevent the original line from being used to assess whether the extension would be permitted development. I see no implication that “original” means “unaltered”.”].

[Source: December 2013 - Code a00429 Appendix. 2]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “Article 1(2) of the GPDO defines “original” in relation to a building existing on 1 July 1948, as existing on that date and there is no question that the conservatory was part of the original building; therefore its rear wall was the rear wall of the original building and the extended part now erected does not extend beyond 3m from that wall. However, does the original building have to remain in situ for permitted development rights to still be available? It seems to me that what has taken place at No.36 was all one operation which consisted of the incorporation of the footprint of the former conservatory into the new enlargement of the building, and on the strict wording of the GPDO I consider it is unnecessary for the original part of the building to have had to remain in place.”].

[Source: November 2015 - Code a00617 Appendix. 3]. [Note: Relates to the rear wall of an original single storey rear projection]. [Quote: “The meaning of ‘original dwellinghouse’ is provided by the GPDO and summarised in the DCLG document “Permitted Development for householders – Technical Guidance”. Put simply, ‘original’ means a building as it existed on 1 July 1948 - where it was built before that date - and as it was built when built after that date. A complication can arise where part of an original dwellinghouse has been demolished and subsequently rebuilt. The Council asserts that this might have occurred here. The Council’s Delegated Report of 18 February 2015 states that “it appears that the existing single storey and closet wing rear additions are not part of the original dwellinghouse due to their architectural design features and materials which are not consistent(sic) with the original building and other buildings in the streetscene.” In cases where some rebuilding or remodeling of parts of a house has taken place, it is customary to regard the footprint (the ground area) of the ‘original dwellinghouse’ as the appropriate starting point for considering whether the proposed works would be permitted by Class A.”].

[Source: May 2016 - Code a00689 Appendix 4.]. [Note: Relates to the rear wall of an original single storey side and rear projection]. [Quote: “Again, a part of the enlarged part of the dwellinghouse would be single storey but it does not theoretically extend more than 4m beyond the rear wall of the original dwelling. I deliberately say theoretically because of course the rear wall no longer exists. The question is whether this is critical. I have to give the ordinary meaning to the words in the GPDO in a broad and commonsense manner. This paragraph is not qualified by the use of such words as “existing” or “remaining” and I see no justification for implying such a qualification. I do not see this interpretation will allow piggy-backing or incremental development to any significant extent. The baseline remains the same, namely that the starting point is the original dwellinghouse. It merely means that in these particular circumstances where an element has been demolished it may potentially be replaced as permitted development and thereafter further extensions added.”].

[Source: July 2016 - Code a00716 Appendix. 5]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “The Technical Guidance issued by the Department for Communities and Local Government on Permitted Development for Householders states that measurement of the extension beyond the rear wall should be made from the base of the rear wall of the original house to the outer edge of the wall of the extension (not including any guttering or barge boards). Whilst this represents the Government’s interpretation of the law, the legislation itself does not reveal any error in that interpretation.”].

[Source: October 2017 - Code a00875 Appendix. 6]. [Note: Relates to the rear wall of an original single storey side infill projection]. [Quote: “The Council also argue that as the [original side projection] has been demolished, its rear wall could not be taken into consideration. The way permitted development works is that the ‘original’ building is used as a basis for measurements and the fact that some changes are made does not mean that the original wall positions should now be ignored for measurement purposes. The development is permitted if the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse by no more than 3 metres in the case of a semi-detached house. It is clear that it is the original dwellinghouse that is to be considered for measuring purposes. ‘Original’ means a building as it existed on 1 July 1948 where it was built before that date, and it is acknowledged that is the case with the appeal building. I therefore conclude that the presence of the [original side projection] is to be taken into consideration for the purposes of assessing the permitted development rights, but it is for the applicant to demonstrate what the original arrangement would have been on the balance of probability.”].

[Source: November 2018 - Code a00998 Appendix. 7]. [Quote: “Where permitted development rights are based on the ‘original’ building the definition in the GPDO must be used. If there is a missing element of a pre-1948 dwelling, it is necessary to ascertain from the available evidence what the dimensions were in 1948, in order to determine the extent of the permitted development right. The appellant makes reference to an appeal decision elsewhere [May 2016 - Code a00689] and also to the Arnold [Arnold v SSCLG [2015] EWHC 1197 (Admin), [2017] EWCA Civ 231] case in support of how the term “original” building is interpreted and I agree with this position. However, I make a distinction between what constitutes an original building and what constitutes an original dwellinghouse, which could be different as a building could contain more than one dwelling. I do not accept the Authority’s interpretation of the GPDO or their reliance on DCP where reference is made to the ‘reduced building’ as the starting point for calculations and as set out in the officer’s report on the LDC application in respect of A.1.(e) and A.2 (b). The Authority did not provide any further explanation of their position in their appeal statement that would have allowed me to understand how they reached this view.”].

[Source: May 2020 - Code a01169 Appendix. 8]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “The Council argues that as the original lean-to has now been demolished, the extension is therefore now a wraparound extension that extends beyond the rear elevation of the original dwelling by 5.1 metres. However, in Article 2 Interpretation (1), 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. There is no dispute between the parties that the lean-to was part of the original building. It is evident from the submitted drawings and from what I observed on site that the rear extension as built does not extend beyond the rear of the original dwelling, being the rear wall of the now demolished lean-to.”].