
Subject: FW: External Mail: Re: LDC for Sunnyside Cottage 21/00558/CLD
Attachments: Appendix 3. - Appeal-Decision-Notice.pdf; Appendix 2. -Appeal-Decision-Notice.pdf; Appendix 1.-Appeal-Decision-Notice.pdf; Case Summaries for Project beyond case law.pdf

Chloe Roberts
Planning Officer

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From:
Sent: 12 September 2021 17:15
To: Roberts, Chloe <Chloe.Roberts@knowsley.gov.uk>
Cc: Kilroe, Alan <Alan.Kilroe@knowsley.gov.uk>
Subject: External Mail: Re: LDC for Sunnyside Cottage 21/00558/CLD

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Chloe & Alan

1. Please see below and attached case summaries and appeal decisions which demonstrate that the GPDO does not require an extension to be (directly) attached to the original rear wall.

A.1(f) does not require an extension to be (directly) attached to the original rear wall.

August 2009 Appeal Ref: APP/J1915/X/08/2093164 33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

Quote: "Certainly it is the case that part of the extension would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, paragraph A.1(e) [of the GPDO 1995] does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house." [Source: Permitted development rights for householders - Technical Guidance]. [This advice is since August 2010]. This conclusion is supported by the diagram on page 20 ("September 2019" version), and by the text on page 20. ("September 2019" version), which states the following: "An extension on a sidewall that extends beyond a rear wall, but is not attached to a rear wall will be subject to the restrictions that apply to rear walls as well as the restrictions on sidewalls (these are covered under section (j) of the rules - see page 22)."]

November 2010 Appeal Ref: APP/Y3615/X/10/2127775 The Lodge, Westwood Lane, Normandy, Guildford GU3 2JE

Quote: "Certainly it is the case that the majority of the conservatory would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, sub-paragraph (i) [of A.1(e) of the GPDO 1995] does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house."

October 2011, Appeal Ref: APP/Y1945/X/11/2155060 119 Leggatts Way, Watford, WD24 5NQ

Quote: "Even if this were not the case, it is my view that in the particular physical circumstances of this case the most reasonable interpretation or perception is that this is an acceptable extension on a sidewall that extends beyond a rear wall by a distance permitted under this part of the GPDO. The fact that the CLG guidance specifically states that 'an extension on a sidewall that extends beyond a rear wall but is not attached to a rear wall will be the subject to restrictions that apply to rear walls as well as side walls' reinforces my view that this is the correct approach to take in such circumstances."

Case summaries with Appeal decisions are attached for your convenience.

2. We are not on Article 2(3) land therefore, as your below screenshot from the technical guidance validates, we are entitled to apply for a 6m extension. "So in the example below the extension is limited to 6m"

This extension has already been applied for as part of a Larger Homes Application, but you rejected the application as you said the side extension had to be applied for via an LDC. Therefore, on what grounds are you stating we may only apply for 3m?

3. This is the third time I have requested clarification on the Lawful Development Certificate for a 3m rear extension. During our Zoom meeting, Alan stated this would "land on our mat". Can you please advise if you need anything from me to enable this?

Thank you in advance



Appeal Decision

Site visit made on 17 October 2011

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 October 2011

Appeal Ref: APP/Y1945/X/11/2155060
119 Leggatts Way, Watford, WD24 5NQ

- 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 Khaliq against the decision of Watford Borough Council.
 - The application Ref 11/00369/LDC dated 7 April 2011, was refused by notice dated 31 May 2011.
 - 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 to: remove existing lean-to and construct new side extension.
- **An application for costs was made by the Appellant against the decision of Watford Borough Council. This is the subject of a separate decision.**
-

Decision

1. The appeal is allowed and I attach a certificate of lawful use or development. This describes the proposed operations to be carried out on the land that I consider would have been lawful at the time of the application.

Reasons

2. Section 195(2) requires an assessment to be made as to whether the Council's refusal of the application is, or is not, well founded. The assessment is based on whether or not the proposed operations were lawful at the time of the application. The planning merits of the proposal are not relevant and there is no planning application before me.

3. The appeal building is a two-storey semi-detached family dwelling in a predominantly residential area. It is not a listed building and is not located within a conservation area. The application seeks a Certificate of Lawful Development for the erection of a single storey side and rear extension. It is proposed to demolish the garage and to build a long side extension approximately 2.3m wide for the full length of the side elevation and projecting 3m beyond the existing rear wall of the property into the garden. There is a detailed planning history relating to previous applications but these matters are not before me. I am only empowered to deal with whether or not the proposals were lawful on 7 April 2011.

4. The Council contends that the proposal is not permitted development under the provisions of the Town and Country Planning (General Permitted Development)

(Amendment) (No2) (England) Order as amended. It is considered that the extension contravenes Part 1, A.1(e) and (h) due to the fact that part of the extension would be built beyond the outer limits of the walls of the original dwelling house. The Council accepts that the proposed development complies with most of the other tests under Class A of Schedule 2.

5. Both A.1(e) and (h) require measurements to be taken from 'a wall' or 'the wall' of the original dwelling house. The Council refers to a previous decision (APP/X5210/C/09/2108390 & C/09/2018392) where the Inspector found that both measurements relating to A.1(e) and (h) require to be from 'a wall' or 'the wall' of the original dwelling house and that 'the wall' whether side or rear constitutes the datum point. The Inspector commented that 'there is nothing in Class A to support the contention that a line can be drawn across a rear garden at a point 4m beyond the rearmost part of the original dwelling and that the GPDO permits the whole of the intervening area to be filled with extensions'. In this case, because the dwelling is semi-detached the relevant distance is 3m and the Council contends that the last 3m of the proposal cannot be regarded as falling within the permitted development rights.

6. The Appellant refers to the CLG technical guidance, 'Permitted development for householders', published in August 2010. On page 18 of this guidance there is a diagrammatic example of what is considered permitted development relating to side wall extensions extending beyond rear walls. Apart from the proximity of the site boundary, the circumstances relating to the proposed LDC application match this example.

7. The wording alongside this example states that 'An extension on a side wall that extends beyond a rear wall but is not attached to a rear wall will be subject to the restrictions that apply to rear walls as well as the restrictions on side walls'. The proposed extension would abut the side wall of the house and then extend no more than 3m beyond the line of the rear wall. The extension meets the criteria relating to a side wall (under section h) because its width is less than half the width of the house. In the CLG example any extension is limited to 3m beyond the rear wall of the semi-detached house. The proposal meets the height criterion.

8. The Council acknowledges the CLG guidance set out on page 18 but 'in this instance', has decided to disagree with this interpretation. In support of its case the Council refers to situations where Inspectors have reached differing conclusions to the advice given by CLG. One example related to a 'wrap-around' side and rear extension (APP/T5150/X/09/2096882) and another which related to there only being 'one principle elevation to a house' (APPA5270/X/10/2137475). The Council stresses that whilst the CLG guidance is a material consideration the wording for the test takes precedence and that the decision maker must take all matters into account. I agree completely with the Council's stance in this respect and in particular that all matters must be taken into account.

9. When considering what is 'permitted development' I also agree that the wording of the Order should take precedence and that advice such as the CLG advice is a material consideration to which weight must be given. This case is not exactly the same as those referred to above which were dealt with by other Inspectors and I must consider this case on its merits. The above cases merely indicate that reasoned arguments should be made in each case and that the weight to be

applied to a material consideration is a matter for the decision maker. This is how I have dealt with this case.

10. In this case the proposed extension would have a single storey. It would extend beyond the line of the rear wall by no more than 3m. It would not exceed 4m and would not have a width greater than half the width of the original dwelling house. In considering the measurements (and what might constitute permitted development) in this case there is no dispute about what constitutes the existing 'rear wall' and the existing 'side wall'. This was clear from my site visit. This is not a 'wrap-around' extension or a 'filling in' between the back of the house and a certain dimension, from the back of the house. The proposal is a straightforward long extension down the side of the house with a (no more than) 3m straight projection into the garden.

11. Having considered all of the material considerations, I disagree with the Council's interpretation of the GPDO in this instance. In accordance with the CLG guidance I consider that the proposal constitutes permitted development. I acknowledge that the structure of the new extension would not be 'built-in' to the rear wall, but it would immediately abut the side wall at its junction with the existing house. I do not find the Council's reasoning that, 'because the extension is not connected to any part of the original dwelling house' it is not permitted development, to be at all convincing. In actual fact, at the point where the rear extension wall would meet the existing rear wall, there would need to be some form of pointing or expansion joint which would, in my view 'connect' the extension to the original dwelling house.

12. Even if this were not the case, it is my view that in the particular physical circumstances of this case the most reasonable interpretation or perception is that is that this is an acceptable extension on a side wall that extends beyond a rear wall by a distance permitted under this part of the GPDO. The fact that the CLG guidance specifically states that 'an extension on a side wall that extends beyond a rear wall but is not attached to a rear wall will be the subject to restrictions that apply to rear walls as well as side walls' reinforces my view that this is the correct approach to take in such circumstances.

13. On all of the evidence before me I can only conclude that the Council's decision to refuse the application for a certificate was not well founded. Therefore, I allow the appeal and as required by section 195(2), I have granted the appellant a certificate. This is attached to this decision.

Anthony J Wharton

Inspector



The Planning
Inspectorate

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 7 April 2011, the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto 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:

The operations were permitted by the Town and Country Planning
(General Permitted Development) Order 1995 under Schedule 2,
Part 1, Class A.

Signed

Anthony J Wharton

Inspector

Date: 24.10.2011

Appeal Reference: APP/Y1945/X/11/2155060

First Schedule

'Remove existing lean-to and construct new side extension'.

Second Schedule

'119 Leggatts Way, Watford, WD24 5NQ

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were 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 to the land specified in the Second Schedule.. 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.



Appeal Decision

Site visit made on 9 November 2010

by R A Sexton BSc(Hons) DipTP MRTPI

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

Decision date: 23 November 2010

Appeal Ref: APP/Y3615/X/10/2127775

The Lodge, Westwood Lane, Normandy, Guildford GU3 2JE

- 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 & Mrs B J Brimfield against the decision of Guildford Borough Council.
 - The application Ref 09/P/02095, dated 22 December 2009, was refused by notice dated 11 February 2010.
 - 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 the erection of a conservatory attached to the rear (north) wall of the dwelling; the conservatory having a depth of 4.0m and width of 5.0m, as shown on plan 09/27.
-

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Reasons

2. The property is a detached, single storey dwelling, originally built in 1860, and subsequently extended a number of times. The proposed conservatory would project 4 metres from the rear wall of an extension built in 1988/89 which links an earlier garage to the original building. On site it was discovered, and agreed, that the section of the original wall on the rear elevation measured 4.9 metres and that the proposed extension would 'overlap' or be attached to the original wall by about the length of a brick – roughly 200mm.
3. The main issue is whether the extension would be permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPDO), as amended in 2008¹.
4. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions set out in paragraph A.1(a) to (i). It is common ground that the exclusions at paragraph A.1(a) to (d), (f), (g) and (i) are not engaged in this instance; and, that the limitation at paragraph A.1(e)(ii) would not be infringed.
5. The Council's decision however cites a conflict with paragraph A.1(e)(i). The exclusion at paragraph A.1(e)(i) advises that development is not permitted by Class A if the enlarged part of the dwellinghouse would:

¹ The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

- (e) (i) *extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse....*
6. The Council's view is that the proposal would fail the limitation imposed by sub-paragraph (i) in 2 respects. First, it is argued the projecting eaves/roof overhang should be taken into account when calculating the depth of the projection – in which case the extension in this proposed development would be 4.25m deep.
 7. However, recently published technical guidance² from the Department for Communities and Local Government has clarified this matter. The guidance, which is accompanied by an illustration, states on page 16 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)." Interpretation of the Order is ultimately a matter for the courts. However, in the absence of any case law on this point being cited by either party, I see no reason not to follow the technical guidance. On that basis, I conclude the extension would not exceed 4m in depth.
 8. Second, the Council contend the limitation would not be met because, "The development would extend from a non-original wall and not from an original rear wall of the dwellinghouse." Certainly it is the case that the majority of the conservatory would not be *from* the rear wall of the original dwellinghouse – in the sense of being attached to it. But, sub-paragraph (i) does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend *beyond* the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house.
 9. 'Beyond' means something other than 'from'. It does not imply or require attachment. It seems to me that there would therefore be no need for the wall of the original dwelling and the extension to touch; one could be off to the side. This interpretation is supported by the guidance and illustration on page 16 of the technical guidance. The explanatory text alongside the diagram shows how the measurement of an extension beyond a rear wall is to be made "... *when* (my emphasis) the extension is directly attached to the rear wall." To my mind that suggests it is conceived there can and will be instances where an extension is not directly attached to the original rear wall.
 10. In this case, as a matter of fact, the proposed rear conservatory would be attached to the rear wall, by about 200mm. However, most importantly in my view it would not project beyond a line drawn 4 metres back from and parallel to the rear wall of the original dwellinghouse. For that reason I consider there would not be any conflict with paragraph A.1(e)(i).
 11. Accordingly, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a rear conservatory 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.

RA Sexton
INSPECTOR

² Permitted Development for Householders: Technical guidance (August 2010)



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 (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 22 December 2009 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The conservatory would be permitted development by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPDO), as amended.

Signed

RA Sexton

Inspector

Date 23 November 2010

Reference: APP/Y3615/X/10/2127775

First Schedule

The erection of a conservatory attached to the rear (north) wall of the dwelling; the conservatory having a depth of 4.0m and width of 5.0m, as shown on Drawing Nos 09/27 and 07/11 Rev: B, dated December 2009, submitted with the application.

Second Schedule

Land at The Lodge, Westwood Lane, Normandy, Guildford GU3 2JE

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. 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.
3. 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.



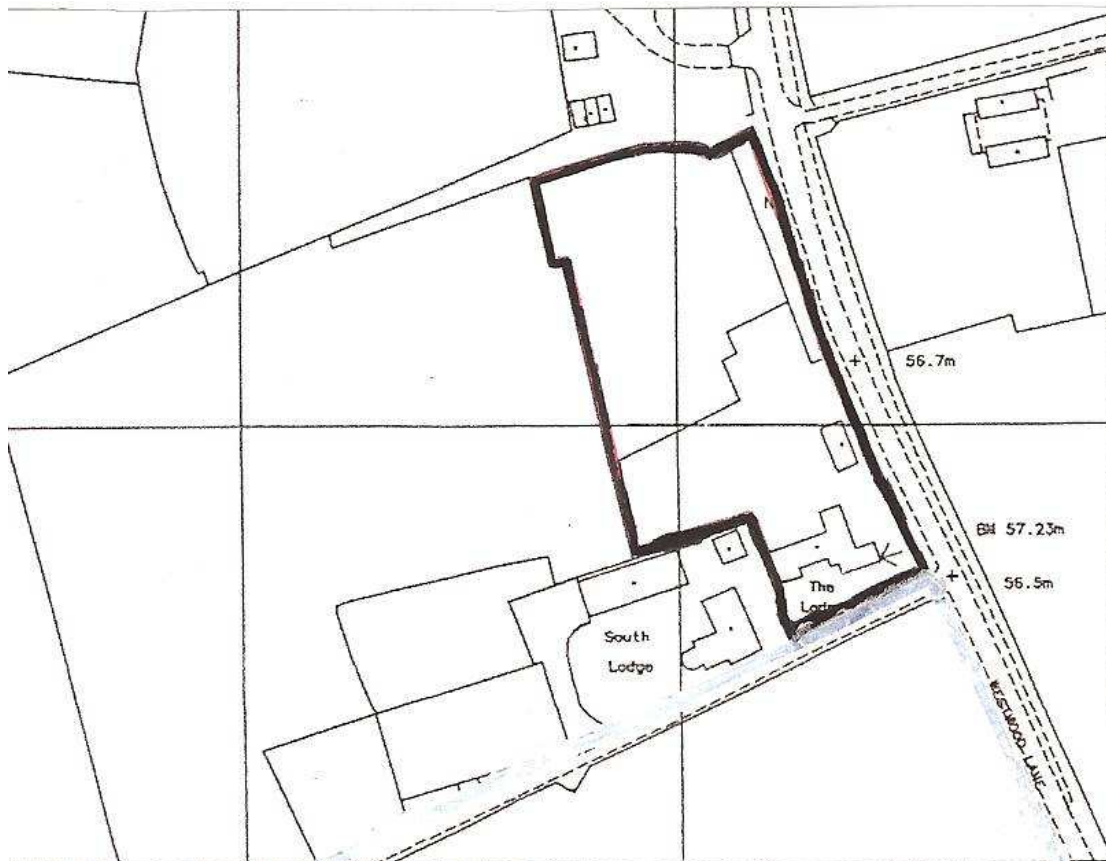
Plan

This is the plan referred to in the Lawful Development Certificate dated: 23/11/2010

by **R A Sexton BSc(Hons) DipTP MRTPI**

Land at: The Lodge, Westwood Lane, Normandy, Guildford GU3 2JE

Reference: APP/Y3615/X/10/2127775





Appeal Decision

Site visit made on 22 July 2009

by **R A Sexton** BSc(Hons) DipTP MRTPI

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

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Temple Quay House
2 The Square
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Bristol BS1 6PN

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Decision date:
12 August 2009

Appeal Ref: APP/J1915/X/08/2093164

33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

- 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 Nigel Halligan against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1790/CL, dated 13 October 2008, was refused by notice dated 1 December 2008.
- 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 single storey rear extension.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Reasons

Procedural Matters

2. The copies of the application form and decision notice provided to me are not dated. I have therefore adopted the dates supplied by the appellant on the appeal form in the banner heading above

The Appeal Site and Proposal

3. The appeal property is a large, detached 2 storey dwellinghouse standing well back from Burnham Green Road and set within a substantial plot. A single storey addition to the rear elevation of the house is proposed.
4. The house has been extended in the past, significantly so in 1978 when planning permission was granted for "two 2 storey side extensions and attached double garage" (Ref: 3/78/1342/FP). The approved plans for that development show the existing house in 1978 to have had a cruciform pattern – which can still be discerned on site today.
5. An Ordnance Survey extract dated 1948 shows a slightly different floor plan, with the whole of the rear elevation in the same plane. However, I place greater weight in this instance upon the arrangement of the building indicated by the approved floor plans that accompanied the 1978 planning application. These are detailed plans, showing all the appearance of having been professionally drawn after a survey of the house. Having regard also to my own site inspection of the building, I am satisfied the cruciform plan is the 'original dwellinghouse' for the purpose of my consideration.

6. The approved 1978 development included the extension of the north easterly arm of the house to produce an enlarged room. Taken from Drawing No.10085-2, the rear wall in question scales about 6.2m, of which 2.8m or so is original. The proposed extension would infill the space between this extended arm of the house and the south easterly projection of the original dwelling; and extend a further 1.899m beyond the rearmost wall of the south easterly projection of the original dwelling. The maximum external depth of the extension overall would be 4 metres.

Appraisal

7. The main issue is whether the extension would be permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPDO), as amended in 2008¹. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions set out in paragraph A.1(a) to (i).
8. The appellant says the single storey extension would be permitted development since it would extend by no more than 4m from the rear wall of the original dwelling and points to support for this stance from the opinion expressed by Council's Solicitor. The Council's decision however cites a conflict with paragraph A.1(e). The exclusion at paragraph A.1(e) advises, in summary, that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse.
9. The Council contend, in essence, that this limitation would not be met because "...the enlarged part of the dwelling would extend in part only beyond the rear wall of the original dwellinghouse." Certainly it is the case that part of the extension would not be *from* the rear wall of the original dwellinghouse – in the sense of being attached to it. But, paragraph A.1(e) does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend *beyond* the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house.
10. As a matter of fact, no part of the enlarged dwellinghouse in this case would project more than 4 metres beyond any part of the rear wall of the original dwellinghouse; nor, indeed, more than 4 metres beyond the rear wall of the original dwellinghouse to which it is attached – albeit attached in part. For that reason I consider there would not be any conflict with paragraph A.1(e).
11. I am satisfied also on the same basis that there would be no conflict with paragraph A.1(h). It is common ground that the exclusions at paragraph A.1(a) to (d), (f), (g) and (i) are not engaged in this instance.
12. Accordingly, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey 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.

RA Sexton
INSPECTOR

¹ The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 13 October 2008 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The single storey rear extension would be permitted development by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPD0), as amended.

Signed

RA Sexton

Inspector

Date: 12 August 2009

Reference: APP/J1915/X/08/2093164

First Schedule

Single storey rear extension, as detailed on Drawing Nos. 10085-1 & 10085-2, dated October 2008, submitted with the application.

Second Schedule

Land at 33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, 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 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.
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: 12.08.09

by **R A Sexton** BSc(Hons) DipTP MRTPI

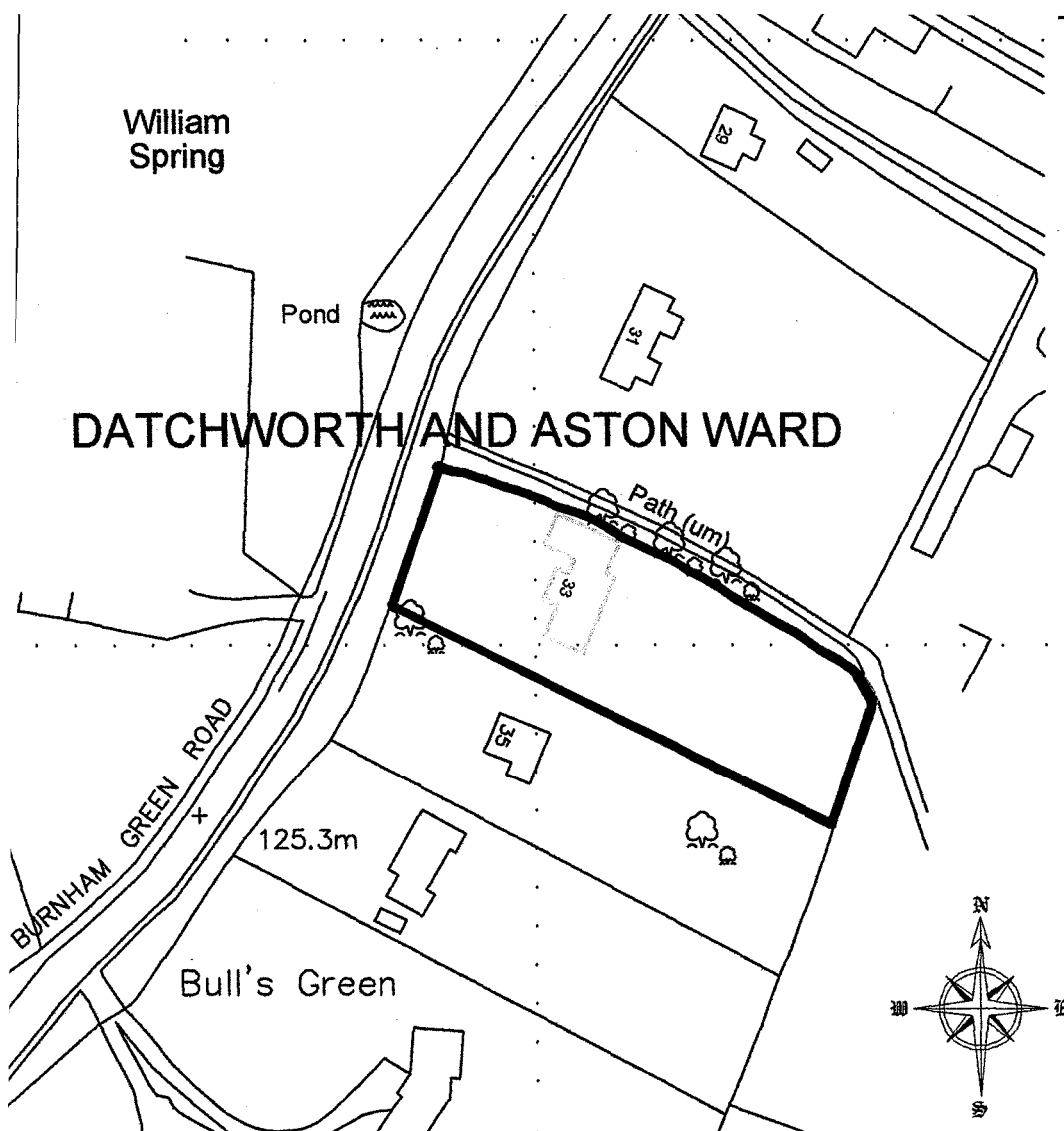
**Land at: 33 Burnham Green Road,
Welwyn, Hertfordshire AL6 0NL**

**Reference:
APP/J1915/X/08/2093164**

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Scale:



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William Spring

Appendix 1.

August 2009 - Appeal Ref: APP/J1915/X/08/2093164 33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

Summary of Case (appeal allowed)

[Quote: “Certainly it is the case that part of the extension would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, paragraph A.1(e) [of the GPDO 1995] does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house.”].

The property is a two-storey detached house. The property has an existing (non-original) two-storey side extension. This is an “LDC Appeal” that relates to an application under section 192 (proposed) for a single storey rear extension. Part of the proposed rear extension would be attached to the rear wall of the original house, and part of it would be attached to the rear wall of the existing side extension. A key issue was whether the development is contrary to the 01/10/2008-29/05/2013 version(s) of Part 1 Class A paragraph A.1(e) of the GPDO 1995, which states the following: “A.1. Development is not permitted by Class A if— (e) the enlarged part of the dwellinghouse would have a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height;” [Note: Part 1 Class A paragraph A.1(e) of the GPDO 1995 → Part 1 Class A paragraph A.1(f) of the GPDO 2015]. The Council’s reason(s) for refusal included the following: “Notwithstanding that the enlarged part of this detached dwelling would be a single storey enlargement extending beyond the rear wall of the existing dwelling by no more than 4 metres and not exceeding 4 metres in height, the enlarged part of the dwelling would extend in part only beyond the rear wall of the original dwellinghouse. For this reason, the proposed development does not fall within the scope of Class A, Part 1 of The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 and planning permission is therefore required.”

The Inspector stated the following: “The Council contend, in essence, that this limitation would not be met because “...the enlarged part of the dwelling would extend in part only beyond the rear wall of the original dwellinghouse.” Certainly, it is the case that part of the extension would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, paragraph A.1(e) does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house. As a matter of fact, no part of the enlarged dwellinghouse in this case would project more than 4 metres beyond any part of the rear wall of the original dwellinghouse; nor, indeed, more than 4 metres beyond the rear wall of the original dwellinghouse to which it is attached – albeit attached in part. For that reason I consider there would not be any conflict with paragraph A.1(e).”

Appendix 2.

November 2010 Appeal Ref: APP/Y3615/X/10/2127775 The Lodge, Westwood Lane, Normandy, Guildford GU3 2JE

Summary of Case (appeal allowed)

Quote: “Certainly it is the case that the majority of the conservatory would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, sub-paragraph (i) [of A.1(e) of the GPDO 1995] does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house.”

The property is a detached house. The property has previously been significantly extended. This is an “LDC Appeal” that relates to an application under section 192 (proposed) for a single storey rear extension. The outer wall of the proposed extension would project 4m from the rear wall of the main house, and the eaves / roof overhang would project a further 0.25m (to a total of 4.25m).

Note: Although drawings for this appeal are available on the Council’s website, and include a proposed site plan, they do not appear to include the proposed floor plans and elevations. As such, please refer to the extract below from the appeal decision notice for a further description of the proposals.

A key issue was whether the development is contrary to the 01/10/2008-29/05/2013 version(s) of Part 1 Class A paragraph A.1(e) of the GPDO 1995, which states the following: “A.1. Development is not permitted by Class A if— (e) the enlarged part of the dwellinghouse would have a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height;” [Note: Part 1 Class A paragraph A.1(e) of the GPDO 1995 → Part 1 Class A paragraph A.1(f) of the GPDO 2015]. The Inspector stated the following: “The property is a detached, single storey dwelling, originally built in 1860, and subsequently extended a number of times. The proposed conservatory would project 4 metres from the rear wall of an extension built in 1988/89 which links an earlier garage to the original building. On site it was discovered, and agreed, that the section of the original wall on the rear elevation measured 4.9 metres and that the proposed extension would ‘overlap’ or be attached to the original wall by about the length of a brick – roughly 200mm. [...] The Council’s view is that the proposal would fail the limitation [A.1(e)] in 2 respects. First, it is argued the projecting eaves/roof overhang should be taken into account when calculating the depth of the projection – in which case the extension in this proposed development would be 4.25m deep. However, recently published technical guidance from the Department for Communities and Local Government has clarified this matter. The guidance, which is accompanied by an illustration, states on page 16 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).” Interpretation of the Order is ultimately a matter for the courts. However, in the absence of any case law on this point being cited by either party, I see no reason not to follow the technical guidance. On that basis, I conclude the extension would not exceed 4m in depth. Second, the Council contend the limitation would not be met because, “The development would extend from a non-original wall and not from an original rear wall of the dwellinghouse.” Certainly it is the case that the majority of the conservatory would not be from the rear wall of the original dwellinghouse – in the sense of being attached to it. But, sub-paragraph (i) does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house. ‘Beyond’ means something other than ‘from’. It does not imply or require attachment. It seems to me that there would therefore be no need for the wall of the original dwelling and the extension to touch; one could be off to the side. This interpretation is supported by the guidance and illustration on page 16 of the technical guidance. The explanatory text alongside the diagram shows how the measurement of an extension beyond a rear wall is to be made “... when the extension is directly attached to the rear wall.” To my mind that suggests it is conceived there can and will be instances where an extension is not directly attached to the original rear wall.”

Appendix 3.

October 2011, Appeal Ref: APP/Y1945/X/11/2155060 119 Leggatts Way, Watford, WD24 5NQ

Summary of Case (appeal allowed):

Quote - : “Even if this were not the case, it is my view that in the particular physical circumstances of this case the most reasonable interpretation or perception is that this is an acceptable extension on a side wall that extends beyond a rear wall by a distance permitted under this part of the GPDO. The fact that the CLG guidance specifically states that ‘an extension on a side wall that extends beyond a rear wall but is not attached to a rear wall will be the subject to restrictions that apply to rear walls as well as side walls’ reinforces my view that this is the correct approach to take in such circumstances.”].

The property is a two-storey semi-detached house. This is an “LDC Appeal” that relates to an application under section 192 (proposed) for a single storey side extension, which would cover the full length of the main side elevation of the property and would then project directly rearward to a point 3m beyond the line of the rear elevation of the property. The proposed side extension would not wrap-around the corner to cover any part of the rear wall of the property. A key issue was whether the development is contrary to the 01/10/2008-29/05/2013 version(s) of Part 1 Class A paragraph A.1(e) of the GPDO 1995, which states the following: “A.1. Development is not permitted by Class A if— (e) the enlarged part of the dwellinghouse would have a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height;” [Note: Part 1 Class A paragraph A.1(e) of the GPDO 1995 → Part 1 Class A paragraph A.1(f) of the GPDO 2015].

A key issue was whether the development is contrary to Part 1 Class A paragraph A.1(h) of the GPDO 1995, which states the following: “A.1. Development is not permitted by Class A if— (h) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would— (i) exceed 4 metres in height, (ii) have more than one storey, or (iii) have a width greater than half the width of the original dwellinghouse;” [Note: Part 1 Class A paragraph A.1(h) of the GPDO 1995 → Part 1 Class A paragraph A.1(j) of the GPDO 2015].

The Inspector stated the following: “The Council contends that the proposal is not permitted development under the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order as amended. It is considered that the extension contravenes Part 1, A.1(e) and (h) due to the fact that part of the extension would be built beyond the outer limits of the walls of the original dwelling house. The Council accepts that the proposed development complies with most of the other tests under Class A of Schedule 2. Both A.1(e) and (h) require measurements to be taken from ‘a wall’ or ‘the wall’ of the original dwelling house. The Council refers to a previous decision (APP/X5210/C/09/2108390 & C/09/2018392) where the Inspector found that both measurements relating to A.1(e) and (h) require to be from ‘a wall’ or ‘the wall’ of the original dwelling house and that ‘the wall’ whether side or rear constitutes the datum point. The Inspector commented that ‘there is nothing in Class A to support the contention that a line can be drawn across a rear garden at a point 4m beyond the rearmost part of the original dwelling and that the GPDO permits the whole of the intervening area to be filled with extensions’. In this case, because the dwelling is semi-detached the relevant distance is 3m and the Council contends that the last 3m of the proposal cannot be regarded as falling within the permitted development rights. [...] The Council acknowledges the CLG guidance set out on page 18 but ‘in this instance’, has decided to disagree with this interpretation. In support of its case the Council refers to situations where Inspectors have reached differing conclusions to the advice given by CLG. One example related to a ‘wrap-around’ side and rear extension [October 2009] and another which related to there only being ‘one principle [sic] elevation to a house’ [January 2011 - Code a00195]. The Council stresses that whilst the CLG guidance is a material consideration the wording for the test takes precedence and that the decision maker must take all matters into account. I agree completely with the Council’s stance in this respect and in particular that all matters must be taken into account. Page 2827 of 3343 When considering what is ‘permitted development’ I also agree that the wording of the Order should take precedence and that advice such as the CLG advice is a material consideration to which weight must be given. This case is not exactly the same as those referred to above which were dealt with by other Inspectors and I must consider this case on its merits. The above cases merely indicate that reasoned arguments should be made in each case and that

the weight to be applied to a material consideration is a matter for the decision maker. This is how I have dealt with this case. [...] Having considered all of the material considerations, I disagree with the Council's interpretation of the GPDO in this instance. In accordance with the CLG guidance I consider that the proposal constitutes permitted development. I acknowledge that the structure of the new extension would not be 'built-in' to the rear wall, but it would immediately abut the side wall at its junction with the existing house. I do not find the Council's reasoning that, 'because the extension is not connected to any part of the original dwelling house' it is not permitted development, to be at all convincing. In actual fact, at the point where the rear extension wall would meet the existing rear wall, there would need to be some form of pointing or expansion joint which would, in my view 'connect' the extension to the original dwelling house. Even if this were not the case, it is my view that in the particular physical circumstances of this case the most reasonable interpretation or perception is that this is an acceptable extension on a side wall that extends beyond a rear wall by a distance permitted under this part of the GPDO. The fact that the CLG guidance specifically states that 'an extension on a side wall that extends beyond a rear wall but is not attached to a rear wall will be the subject to restrictions that apply to rear walls as well as side walls' reinforces my view that this is the correct approach to take in such circumstances." Note: The Inspector rejected an application for costs against the Council October 2011.