

Appeal Decision

Site visit made on 13 March 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 13 April 2017

Appeal Ref: **APP/B0230/X/16/3154907**

172 Crawley Green Road, Luton LU2 0SH

- 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 Andrzej Kurowski against the decision of Luton Borough Council.
 - The application ref 16/00646/LAWP, dated 8 August 2016, was refused by notice dated 15 July 2016.
 - 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 development is sought is single-storey rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded.
 3. No. 172 is an end of terraced dwellinghouse. Its front elevation faces Crawley Green Road and it has a rear and side elevation; the latter is opposite no. 174. The rear elevation has a mono-pitched single-storey conservatory that sits close to the common boundary with no. 170. There is a separate outhouse physically attached to the dwelling. It forms a single-storey outrigger type addition to the original dwellinghouse but it cannot be accessed from within the dwelling. The existing floor plan shows the outhouse as an outdoor toilet and storage room.
 4. The proposed single-storey extension would be 3 metre deep and 3 m high; it would span the entire width of the rear elevation. The existing conservatory and outrigger would be removed to make way for the proposed development.
 5. Mr Kurowski's case is a simple one, namely, that the development does not require express planning permission by virtue of permitted development ['PD'] rights set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. On the other hand, the Council submit the proposed development contravenes paragraph A.1(j) subsection (iii). The exception is that development is not permitted by Class A if –
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The enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse¹, and would –
(i) exceed 4 metres in height,
(ii) have more than a single storey, or
(iii) have a width greater than half the width of the original dwellinghouse.

6. The Council's argument is that the rear wall of the original dwelling is not one continuous plane but includes the existing outhouse which forms a rear and side wall to the original dwellinghouse. The Council acknowledge the outhouse would be demolished but contend that the outrigger should be treated as if it remains in existence when assessing Class A PD rights. The Council submit paragraph A.1(j) is triggered because the proposed extension would extend beyond a wall forming a side wall of the original dwellinghouse. The extension would span the entire width of the rear elevation and conflict with A.1(j) (iii), because the width of the extension would be greater than half the width of the original dwellinghouse.

For the following reasons, I do not accept those submissions.

7. Deemed planning permission is granted by virtue of Article 3(1) of the GPDO. Classes of development described as PD are set out in Schedule 2. Part 1, Class A of that Schedule grants planning permission for development within the curtilage of a dwellinghouse comprising enlargement, improvement or other alteration subject to exceptions and conditions set out in paragraphs A.1 – A.4. For development to comprise PD, it must satisfy all tolerances, conditions and limitations. The phraseology clearly indicates that these rights focus on prospective development.
8. The enlarged part of the dwellinghouse is the part which is proposed within Class A as the enlargement². In principle, the enlargement is permitted where it concerns a dwelling, as defined, unless it is subject to one of the exceptions in paragraph A.1. When assessing what comprises the relevant operational development in the enlargement pursuant to Class A, it is necessary and reasonable to consider the development on a holistic basis. It would be important to consider what is the particular operational development proposed in considering whether that development, as a whole, falls within the scope of Class A PD rights.
9. Putting to one side the potential argument that the outhouse is not part of the dwellinghouse, the evidence presented indicates that building operations proposed include the demolition of the existing structures to the rear elevation. These would be obliterated to make way for the enlarged part of the dwellinghouse. The outhouse would, as a matter of fact, be demolished as part of the proposed work because a new extension would completely replace it. Once demolished, the outrigger would not exist in reality and there would be no rear projection that includes a rear or side wall to the original dwellinghouse.
10. I consider that the type and nature and scale of the demolition work suggest it is not substantially different in character to what is permitted under Class A. In my assessment, the demolition operations and subsequent construction of the single-storey rear extension, as a whole, would amount to a single building operation.

¹ Article 2(1) of the GPDO defines *original* as follows: in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date; in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built.

² See *R (Oao Hilton) v Secretary of State for Communities and Local Government* (official Court transcript cites *Secretary of State for Home Department*) [2016] EWHC (Admin) and *Eatherley v LB Camden and James Ireland* [2016] EWHC 3108 (Admin).

11. Having regard to the ordinary meaning of the words in paragraph A.1(j), the test indicates a straightforward comparison between the proposed enlargement of the dwellinghouse with any side wall of the original dwellinghouse to see whether it would extend beyond it. If it does, then the exception will apply. If the enlargement would exceed 4 m in height, or be more than one storey or if it would have a width greater than half the width of the original dwellinghouse, it would be fall outside the scope of PD. If, on the other hand, the enlarged part does not extend beyond any side wall of the original dwellinghouse, this exception is not triggered. There is nothing absurd about applying the test in that manner nor does such an approach fly in the face of common sense.
12. Now, as I have already observed, the plans clearly show operational development comprises replacement of the rear outrigger and conservatory by the proposed single-storey extension. Consequently, the proposed Class A enlargement, as a whole, purely relates to the rear of the dwelling; there would be no side projection whatsoever. This is because the rear extension *would not extend beyond a wall forming the side elevation to the original dwellinghouse*. Subsequently, there would be no contravention of the threshold set in paragraph A.1(j); therefore, subsections (i) - (iii) would not be engaged [my emphasis].
13. The circumstances might be different if the rear outrigger is not demolished; however, that is not what is actually proposed in this LDC application. I have seen nothing in the Department's technical guidance to suggest my approach is incorrect³. The proposed Class A development would satisfy all of the other thresholds set out in paragraph A.1 relevant to the scheme. As a matter of fact and degree, I find the proposed development would constitute PD and benefit from a deemed planning permission by virtue of Article 3(1) of the GPDO.
14. The Council refer to two appeal decisions within its administrative area⁴. These relate to appeals against refusal of prior approval for proposed development pursuant to Schedule 2 Part 1 Class A paragraph A.4 (large household extensions). On paper, at least, it seems the layout of those properties is similar to no. 172, although the rear outhouse had been demolished. While full details of these cases are not before me, a fair reading of these appeal decisions indicates the decision-makers were unaware of the High Court's judgements cited above. I have evaluated this application on its individual facts and circumstances.
15. Having regard to the particular facts and circumstances of this case, for the reasons given above, on the balance of probabilities and on the evidence now available, I am satisfied that the proposed building operations comprising erection of a single-storey rear extension would be lawful if instituted or begun at the time of the application.
16. I therefore conclude the Council's refusal to grant the LDC 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.

A U Ghafoor

Inspector

³ *Permitted development for householders, technical guidance* April 2016. In particular, pages 22 to 28.

⁴ Same digits ending with /3139329 dismissed 7 June 2016 88 Overstone Road and 3137091 dismissed 10 May 2016 140 Turners Road.

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on the date of application, 8 August 2016, 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 proposed building operations comprised in the erection of a single-storey rear extension would be lawful because they constitute permitted development and benefit from a general planning permission granted by Article 3 and Schedule 2, Part 1, Class A to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

A U Ghafoor

Inspector

Date: 13 April 2017

Reference: APP/B0230/X/16/3154907

First Schedule

Erection of a single-storey rear extension illustrated in drawing number reference 172CRAW/PROP ending with the following digit: 01 roof plan, 02 ground floor plan, 03 section A-A, 04 rear elevation, 05 side elevation, 06 block plan and 07 site plan.

Second Schedule

Land at 172 Crawley Green Road, Luton LU2 0SH, outlined in red on the site plan attached to this decision.

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 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.
 3. This certificate applies only to the extent of the operations 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.
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Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 April 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

Land at 172 Crawley Green Road, Luton LU2 0SH.

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Scale: Scale not stated.

