



Appeal Decision

Site visit made on 4 October 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/L5810/X/21/3286794

Land rear of 33 Petersham Road, Richmond TW10 6UH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs N Gale against the decision of the Council for the London Borough of Richmond Upon Thames.
 - The application ref 21/1837/PS192, dated 18 May 2021, was refused by notice dated 15 July 2021.
 - 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 construction of rear extension projecting 4 metres from the rear of the existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposed development 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 (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

3. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

4. The application was made under section 192(1)(b) of the Act which relates to proposed development in the form of operations. The appellant submits that the proposed extension would amount to permitted development under Schedule 2, Part 1, Class A (Part 1 Class A) of the Town and Country Planning (General Permitted Development) (England) Order 2015. For that reason, she considers that the development does not require express planning permission.
5. Part 1, Class A relates to the enlargement, improvement or other alteration of a dwellinghouse. However, the Council disputes that the building is a dwellinghouse and argues it is not eligible for permitted development rights under Part 1, Class A.

6. The Council dealt with an application for a lawful development certificate (LDC) in respect of the building in 2020 (Council Ref. 20/1677/ES191) (the 2020 LDC). The 2020 LDC was issued to 'confirm the use of boathouse and its curtilage in C3 use' and the Council described the site as 'boathouse formerly connected to 33 Petersham Road' (No. 33). The Council's position is that the boathouse was constructed in the garden of 33 Petersham Road as an incidental use and that it is not an independent dwellinghouse. The description of development on the LDC does not provide any clarification of this point. There is also nothing to demonstrate that when the application for the LDC was under consideration, the issue of whether or not the subdivision of the original curtilage of No. 33 was an act of development for which planning permission was required was addressed.
7. Notwithstanding the intentions of the appellant in submitting the application for the 2020 LDC or the Council's interpretation of the evidence presented to it, taken at face value the 2020 LDC states that the boathouse is a C3 use, which is use as a dwellinghouse¹. Therefore, on the basis of the evidence provided by the appellant the building benefits from permitted development rights including those under Part 1, Class A. However, in this case these rights have been restricted by an Article 4 Direction, which is referred to by the Council in its planning report.
8. The Council has not provided a copy of the Article 4 Direction but says that it relates to development involving the formation of usable space below ordinary ground level in proximity to a private dwelling house. The appellant has not provided sections which would demonstrate whether or not the ground level of the land adjacent to it would be changed to accommodate the extension. However, on the basis of the floor plans and elevations it is reasonable to conclude that in order to provide useable facilities in the kitchen and shower room, excavation will be necessary.
9. The appellant has not provided any evidence to demonstrate that excavations would not be necessary nor to show that the restrictions imposed by the Article 4 Direction do not apply in this case.
10. Drawing all of these points together, even if the boathouse is a dwellinghouse, the extension is not permitted development by virtue of the fact that the Article 4 Direction has removed the right to carry out the proposed works without express planning permission.

Conclusion

11. 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 construction of rear extension projecting 4 metres from the rear of the existing dwelling at land rear of 33 Petersham Road, Richmond TW10 6UH was well-founded, albeit for a different reason, 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.

Sarah Dyer

Inspector

¹ The Town and Country Planning (Use Classes) Order 1987 as amended