



Appeal Decision

Site visit made on ** October 201*

by Mrs * H***** BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: ** February 201*

Appeal Ref: APP/N**/X/1*/*******

F*** Road, Hendon, London NW* *****

- 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 Dr Christo against the decision of the Council of the London Borough of Barnet.
 - The application Ref: 1*/****/***, dated * April 201*, was refused by notice dated ** April 201*.
 - 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 building a full width single story rear extension.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the full width single storey extension would comply with the conditions and limitations of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In particular, the issue is whether or not the development would comply with limitation A.1(j) which states development is not permitted if 'the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (iii) have a width greater than half the width of the original dwellinghouse.'

Reasons

3. The issue between the parties is whether or not the existing bay element on the rear elevation has side elevations for the purposes of the GPDO and if so whether the proposed extension has a width greater than half the width of the original dwellinghouse.
 4. The bay consists of a two storey projection, with a tiled roof and rendered walls and windows. The two other walls of the bay are angled back from this rear elevation towards the rear wall of the house. The bay is constructed of rendered walls and fenestration with a tiled roof. The angled walls form the sides of the bay projection. To my mind it would be a natural use of language to refer to the angled walls as the sides or side elevations of the bay structure.
 5. The appellant considers that the front and sides of the bay window are too flimsy to be defined as side walls as they are constructed of mostly wood,
-

plaster, glass, clay tiles and plastic and the side window is not a load bearing structure. The bay is two storeys in height with a roof supported on the structure and is therefore, in my view, a substantial significant permanent structure. Moreover, on the evidence available I consider it is an original feature of the original dwellinghouse.

6. The Council state the bay projection has a depth of 1m from the rear elevation wall with the rear elevation of the bay with patio doors facing towards the rear garden. The appellant states that the angled bay sides carry a 1.06m perpendicular projection and a 0.57m lateral component. The appellant calculates the angle of the angled bay side as 61.7 degrees.
7. 'Side elevation' is not defined in the GPDO but is stated within the Governments Technical Guidance April 2017 '*Permitted development rights for householders*' to be any wall that cannot be identified as being a front wall or a rear wall. It further states that houses will often have more than two side elevation walls. The diagrams that follow within the Technical Guidance do not show the circumstances of the current case. In my view, it is a matter of planning judgement, on the facts of a particular case, what constitutes a side elevation on any dwellinghouse taking into account the guidance in the Technical Guidance.
8. The Council refer to two 2017 appeals and refer to high court decisions on the two appeals. However, no high court transcripts or court case references have been provided. In the case of the 2017 appeals the decisions turned on the individual circumstances of the appeal property.
9. The appellant has referred to a 2010 appeal decision. No copy of that decision was provided as part of the evidence submitted albeit an extract of it was provided which stated:

'At my site visit I examined the nature of the property and in particular those walls forming the side and rear elevations which the appellants contend to be original 'footprint'. As a matter of fact and degree, I find that the proposal would not extend beyond a wall forming a side elevation of the original property. In my judgement, the angled rear wall of the toilet/utility room and the protrusion of the rear facing bay window are not within a reasonable definition of the term 'wall forming a side elevation' and should be regarded as the rear wall''.

This decision was one that turned on the particular circumstances and design of the appeal property. I have no plans to explain how it was designed, or the whole decision. Moreover, I have considered what I saw at the current appeal site visit and the plans and reached my own conclusions on this case.
10. The appellant considers that the angle of the bay elevations results in the angled elevation not being capable of being a side wall. The Technical Guidance refers to a wall that is not a front or rear elevation as being a side elevation.
11. The patio doors within the bay element are clearly rear facing and on the rear elevation of the bay window. However, I do not accept that the three elevations of the bay window are all rear elevations, they do not all face the rear with the angled elevations facing more towards the side boundaries than the rear. In my view, the angled elevations of the bay are not rear or front elevations and thus must be side elevations. I therefore find, as a matter of fact and degree that the bay projection consists of a rear elevation and two side elevations, albeit the side elevations are at an angle.

-
12. The appellant states that as the side walls of the bay will be removed and replaced with the proposed rear extension that there would be no side elevations present beyond which the proposed extension would project. However, the side angled elevations of the bay window are part of the original dwellinghouse, and whether they are removed or not it would have always been two of the side elevations of the original dwellinghouse, and thus the proposed extension would extend beyond those side elevations on the original dwellinghouse.
13. In my view, the proposed extension would extend beyond the side walls of the bay window which form side elevations of the original dwellinghouse. The proposed extension extends the full width of the dwellinghouse, replacing the bay element at ground floor level and thus has a width greater than half the width of the dwellinghouse. As such it is contrary to limitation A.1 (j) of Class A of Part 1 of Schedule 2 of the GPDO and would require planning permission.

Conclusion

14. I therefore conclude that the proposed extension would not fail to comply with limitations within paragraph A.1 (j) of Class A of Part 1 of Schedule 2 of the GPDO and would require planning permission. Thus, the Council's refusal was well founded, and the appeal will therefore fail.

***** *H******

Inspector