# Appeal Decision

Site visit made on 1 October 2013

**by Paul Dignan MSc PhD**

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

**Decision date: 11 November 2013**

**Appeal Ref: APP/M5450/X/12/2189103**
**33 Northwick Park Road, Harrow, Middlesex, HA1 2NY.**

- 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 H Farooqi against the decision of the Council of the London Borough of Harrow.
- The application Ref. P/1060/12/4673, dated 13 April 2012, was refused by notice dated 15 June 2012.
- 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 erection of part double storey rear extension and two sheds in rear garden.

## 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.

## Reasons

2. The appeal property is a two storey semi-detached house with a good sized rear garden containing a single storey detached garage. At the time of my site visit a building had been erected in the rear garden. Although its siting and overall scale was similar to one of the proposed outbuildings, the design is materially different to that shown on the application plans. As I understand it, this building was not built at the time of the application.

3. The LDC was sought on the basis that the proposed development would be permitted development (PD) under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GDPO). Part 1 of Schedule 2 to the GPDO grants PD rights in respect of a development within the curtilage of a dwellinghouse. On the basis of its investigations, the Council concluded that the house was being occupied as a House in Multiple Occupation (HMO). Its view is that a HMO is not a dwellinghouse for the purposes of the GPDO and does not therefore benefit from GPDO Part 1 Schedule 2 PD rights. For this reason it determined that the LDC should not be issued.

4. In the GPDO, this meaning of “dwellinghouse” is qualified only insofar as it does not include “a building containing one or more flats, or a flat contained within such a building”. The term ‘dwellinghouse’ is commonly understood to mean,

for planning purposes[1], premises that ordinarily afford the facilities required for day-to-day private domestic existence. When considered in this context, regardless of whether the house was, at the time of the application, being occupied as a HMO or as a single family dwelling, as claimed by the appellant, I consider, as a matter of fact, that the property was a dwellinghouse.

5. I consider that HMOs, whether occupied by up to six residents, and hence falling within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO), or more than six residents, and hence a *sui generis* use, are dwellinghouses for the purposes of the GPDO, provided that they are not expressly excluded from that definition. In other words, a HMO is simply a type of dwellinghouse use. It is not a condition of qualifying for GPDO PD rights that a "dwellinghouse" is a "dwellinghouse" of a particular type described in the UCO. Since the appeal building is not excluded from the definition of 'dwellinghouse' by virtue of containing one or more flats, I am satisfied that it benefits from the PD rights granted by Part 1 of Schedule 2 to the GPDO. As a result the appellant does not have to demonstrate, as he has sought to do in this case, that the house is being occupied as a single family dwelling.

6. The proposal involves the erection of two detached garden buildings, with the demolition of the existing garage, and the erection of a two-storey extension to the rear of the house. There is no dispute that the garden buildings fall within the limitations placed on such buildings by GPDO Part 1 Schedule 2 Class E, nor is it argued that they are not required for a purpose incidental to the enjoyment of the dwellinghouse as such. On this basis I consider that a LDC can be granted in respect of this aspect of the proposed development.

7. In relation to the proposed rear extension, the Council is of the opinion that an existing single storey rear projection is not entirely original, and that as a result the proposed rear extension would, in part, extend more than 3 metres from the rear wall or the original dwelling. If that was the case, it would exceed the Class A1(j) limitation and would not be development permitted by the GPDO. However, even if the existing projection is disregarded entirely, the application plans indicate that the proposed extension would extend just 3 metres from the main rear elevation, which is within the Class A1(j) limitation. On this basis I conclude that it would be development permitted by GPDO Part 1 Schedule 2 Class A.

## Other matters

8. I have had regard to the matters raised by local residents. These predominantly concern the planning merits of the proposed development, and the possibility that the garden buildings might be used for separate residential purposes. However, these are not matters that I can take into account in these appeals which turn on the facts of the case and their interpretation in the light of relevant planning law and judicial authority.

## Conclusion

9. The matter to be determined in an appeal made under section 195 of the 1990 Act is whether the Council's decision to refuse to grant a LDC was well founded. In this case, for the reasons given above, I conclude that the Council's decision

[1] *Gravesham BC v SoS for the Environment (1984) 47 P7CR 143 (1983) JPL 307*

to refuse to grant a LDC was not well-founded. I will exercise the powers transferred to me under s.195(2) of the 1990 Act as amended and issue a LDC accordingly.

*Paul Dignan*

INSPECTOR

The Planning Inspectorate

# 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 13 April 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, 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 erection of part double storey rear extension and two sheds in rear garden, shown on Drawings LW/NR/04/12 -01 to 10 would be within the terms of Schedule 2, Part 1, Class A and Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

Signed

*Paul Dignan*
Inspector

Date: 11 November 2013
Reference: APP/M5450/X/12/2189103

***First Schedule***
Erection of part double storey rear extension and two sheds in rear garden.

***Second Schedule***

Land at 33 Northwick Park Road, Harrow, Middlesex, HA1 2NY.

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 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.

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.

The Planning Inspectorate

# Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 November 2013

**by Paul Dignan MSc PhD**

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