

Appeal Decision

by K R Saward Solicitor

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

Decision date: 19 September 2016

Appeal Ref: APP/H1515/X/16/3149030

51 Westwood Avenue, Brentwood, Essex CM14 4NU

- 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 J Merrick against the decision of Brentwood Borough Council.
 - The application Ref 16/00096/S192, dated 20 January 2016, was refused by notice dated 30 March 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 use or development is sought is a proposed dormer to rear to form rooms in roof, roof lights to front, together with internal alterations.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As the appeal concerns matters of law and facts, a site visit was unnecessary.
3. The original application was made by Mr and Mrs J Merrick. The appeal was brought and proceeds in the sole name of Mr Merrick.

Main Issue

4. The main issue is whether the Council's refusal to issue a LDC was well founded. This turns on whether the proposed roof dormer and roof lights would have been lawful at the time of the application, and not whether planning permission should be granted. Representations concerning the effect on neighbouring privacy, amenity space and the presence of other development in the vicinity are not, therefore, relevant to my determination.

Reasons

5. On 29 April 2005 the Council granted planning permission for the 'erection of a three-bedroom end of terrace dwelling together with single storey extension to rear and alterations to roof of 51 Westwood Avenue'. That permission was implemented resulting in a roof extension to the existing dwelling at No 51 and the creation of a new end of terrace dwelling known as No 51a.
 6. Conditions attached to the 2005 planning permission restricted certain future development at Nos 51 and 51a. In particular, the following conditions were imposed:-
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"4. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 or any subsequent re-enacting Order no alterations, including the enlargement of or provision of additional window openings or provision of roof lights, shall be made to the fenestration pattern hereby approved."

"6. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, or any subsequent re-enacting Order this permission shall not be implemented if prior to the implementation of this permission any extension is erected to number 51 Westwood Way, thereafter no extensions whatsoever shall be erected to the dwelling hereby permitted nor to number 51 Westwood Way." [Underlining is my emphasis].

7. The proposal is for an extension comprising a rear dormer window and the insertion of front roof lights at No 51. The Council acknowledges that the specification of the dormer window would fall within the limits of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the roof lights within those in Class B. Nevertheless, neither benefits from planning permission under Article 3 of the Order where the development would be contrary to any condition imposed by any planning permission.
8. In this case, condition 6 of the 2005 permission explicitly prohibits any further extension at No 51. Condition 4 prevents any change to the approved fenestration pattern including the provision of roof lights. Therefore, the proposed extension and roof lights would not be permitted development. The conditions are not negated by a subsequent approval for a first floor extension with additional windows at No 51a.
9. The appellant considers the planning conditions to be unreasonable. However, it is not for me to consider the reasonableness of the conditions pursuant to a LDC appeal which is concerned solely with the lawfulness of the development proposed. As things stand, the conditions remain in place and the proposed dormer window and roof lights would be in breach of condition. Accordingly, the proposal would not be lawful.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed 'dormer to rear to form rooms in roof, roof lights to front, together with internal alterations' was well-founded 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.

KR Saward

INSPECTOR