

Appeal Decision

Site visit made on 21 August 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 28 September 2016

Appeal Ref: APP/G3110/X/16/3149388
2 Piper Street, Headington, Oxford OX3 7AR

- The appeal is made by Ann Axberg under section 195 of the Town and Country Planning Act 1990 against a refusal by Oxford City Council to grant a lawful development certificate.
 - The application Ref: 16/00431/CPU, dated 13 February 2016, was refused by notice dated 24 March 2016.
 - The application was made under section 192(1)(b).
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Procedural matters

1. The development for which the certificate is sought has been described differently on the application form, the application plans, the decision notice and the appeal form. I have treated it as being the formation of a habitable room in the loft space with the erection of two rear dormers and the installation of a rooflight in the front roof.
2. The plans are inaccurate, since they show the existing ridge height of the higher roof of the rear offshot as being part way up the rear slope of the main roof of the house, when it is in fact at the eaves height of the main roof. I have proceeded with the appeal, since the decision would have been the same had the plans been accurate.

Decision

3. The appeal is dismissed.

Reasons for the decision

4. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the proposed operations would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 5. The Council refused the application because they did not consider that the operations were authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Class A. The appellant maintains that the operations were considered under the wrong Class.
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6. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, but because of the limitation in A.1(k)(iv) it does not permit development that would consist of or include an alteration to any part of the roof of the dwellinghouse. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to the limitations in B.1 and the conditions in B.2. Class C permits any other alteration to the roof of a dwellinghouse, subject to the limitations in C.1. A dwellinghouse can have more than one roof.
7. The plans show that the proposals involve the construction of a dormer at the main roof at the rear and a dormer at a lower level on the higher of the roofs of the rear offshot, with the dormers being joined to each other. They also show a skylight in the roof at the front of the house. The proposals therefore consist entirely of roof additions or alterations and fall to be considered under Class B, not Class A, apart from the skylight, which is permitted by Class C provided it does not protrude more than 0.15m.
8. The Council's reason for refusal is flawed since it is based on Class A. I have therefore assessed the proposals under Class B. There is no dispute that the proposals comply with the limitations in B.1 and can comply with the conditions in B.2(a) and B.2(c). The issue is whether they comply with B.2(b).
9. Condition B.2(b), as amended, states: -

 “(b) the enlargement shall be constructed so that—

 (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension —

 (aa) the eaves of the original roof are maintained or reinstated; and

 (bb) the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves, measured along the roof slope from the outside edge of the eaves; and

 (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse;”
10. The proposals will only comply with B.2(b)(i) and B.2(b)(ii) if they are treated as “an enlargement which joins the original roof to the roof of a rear or side extension”, since about half the eaves of the original, main, rear roof will be lost and, where this occurs, the enlargement will extend beyond the outside face of the external, rear wall of the original dwellinghouse. In my opinion, however, it cannot be treated in this way, because the main rear roof will be replaced almost entirely by a dormer; and it is this dormer, and not the original roof, that will be joined to something; and what it will join is not the roof of an extension, but the other dormer that it is proposed to erect.

11. I have considered the advice on page 36 of the Government publication *Permitted development rights for householders: Technical Guidance* (April 2016 revision). The Introduction to the Guidance states: "It is designed to be used by anyone who wants to understand more about the detailed rules on permitted development and the terms used in those rules" and it adds: "Given the very substantial variations in the design of individual houses, this guide cannot cover all possible situations that may arise". In some respects, page 36 lends support to the appellant's case, but after a detailed consideration of how the terms of the Order apply to the particular enlargement proposed in this appeal, I have come to the view that it is not permitted development.
12. I have therefore concluded that the operations would not be lawful if begun at the time of the application. I am satisfied that the Council's refusal of the application is well-founded, although not for the reason given by them. The appeal has therefore been dismissed, as required by section 195(3).

D.A.Hainsworth

INSPECTOR