
Appeal Decision

Site visit made on 22 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/T0355/X/16/3142500
132 Vansittart Road, Windsor SL4 5DQ

- The appeal is made by Luisa Lee under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the Royal Borough of Windsor & Maidenhead to grant a lawful development certificate.
 - The application Ref: 15/03292, dated 23 September 2015, was refused by notice dated 3 December 2015.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is "Conversion of loft into habitable accommodation with the construction of 2 dormers and installation of 3 rooflights".
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is dismissed.

Reasons for the appeal decision

3. 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.
 4. The Council refused the application because they considered the operations would not be lawful for various reasons. Although this is not spelt out in the decision, the reasons all relate to limitations in Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. The appellant maintains that the operations fall to be considered under Class B, not Class A, and that the certificate should be granted because the provisions of Class B are complied with.
 5. 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
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- 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.
6. The development for which the certificate is sought is the conversion of the loft into habitable accommodation with the construction of two dormers and the installation of three rooflights. The plans show that this involves the construction of dormers at the main roof at the rear and on the lower roof of the rear offshot, the dormers being joined to each other. They also show a flat roof skylight on the first dormer and two Velux windows in the roof at the front of the house.
 7. The development therefore consists entirely of roof additions or alterations and falls to be considered under Class B, not Class A, apart from the Velux windows, which are permitted by Class C since they will not protrude more than 0.15m. The Council's reasons for refusal are therefore flawed since they are based on Class A. However, there is also a flaw in the appellant's case (and the Council's acceptance of it in response to the costs application), since it does not accurately reflect the amended conditions in B.2(b) that were introduced in 2014 and are now consolidated into the 2015 Order. None of the decisions referred to by the appellant are therefore relevant to the appeal, since they were all decided before the Order was amended.
 8. 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;”
 9. The proposed enlargement will only comply with B.2(b)(i) and B.2(b)(ii) if it is 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 construct.

10. I have considered the advice on page 36 of the Government publication *Permitted development rights for householders: Technical Guidance* (April 2016 revision) and the parties' observations about it. 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.
11. 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 reasons given by them. The appeal has therefore been dismissed, as required by section 195(3).

D.A.Hainsworth

INSPECTOR