

Appeal Decision

Site visit made on 28 September 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 13 October 2016

Appeal Ref: APP/Q5300/X/16/3143760
21 Glenbrook South, Enfield EN2 7HQ

- 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 (hereinafter "certificate").
 - The appeal is made by Mr Evagoras Mandrides against the decision of the Council of the London Borough of Enfield.
 - The application ref. 15/05106/CEA, dated 11 November 2015, was refused by notice dated 1 February 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 is sought is described at section 8 of the application form as "Side dormers and 1 side roof window".
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operations which are considered to be lawful.

Matters of clarification

2. The description of the proposed development is more accurately recorded on the Council's decision notice and section E of the appeal form as "Dormer windows to each side and windows to both gable ends." I have proceeded on that basis.
 3. I have set out the appellant's surname in the heading above as it appears at section 1 of the application form.
 4. I shall treat the appeal as one against the Council's refusal to grant a certificate as set out in the reason for the appeal at section F of the appeal form, even though at section C it is indicated that the Council did not issue a decision. The Council's decision notice is dated 1 February 2016 (within the appropriate period) and the Planning Inspectorate received the appeal electronically on 3 February 2016.
 5. To make sense of the proposal, I have taken into account the version of drawing number GBS-2015/002 that includes a dormer window (with frosted glass) in the roof slope facing south-west in the section AA drawing.
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6. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
7. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant, and they are not therefore issues for me to consider, in the context of an appeal made under section 195 of the 1990 Act as amended.
8. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probability.

Main issue

9. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

10. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
11. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO"). I have also taken into account the householder "Technical Guidance" referred to by the Council, which was updated in April 2016 to take account of the 2015 GPDO.
12. Schedule 2, Part 1, Class B of the GPDO sets out the permitted development rights and accompanying limitations and conditions as they apply to the enlargement of a dwelling house consisting of an addition or alteration to its roof. Class C does likewise but applies to any other alteration to the roof of a dwelling house.
13. Class C is normally reserved for roof alterations that would not involve any enlargement of the house such as the installation of roof lights. The planning officer's report refers to a roof light but I cannot identify one in the submitted plans, the description of the development on the decision notice or the Council's two reasons for refusal. Consequently, I have seen nothing to convince me that Class C is directly applicable to this case.
14. The key area of disagreement between the parties centres around the limitation at Class B.1 (c); that is whether any part of the dwelling house would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwelling house and fronts a highway.
15. The south-western end of the Glenbrook South roadway ends with a semicircular turning area. The semi-detached houses at nos 21 and 22 Glenbrook South are approached on foot along a public footpath which progresses south-west from the end of the turning area. There is a public right of way along this footpath and it is classed as a highway, just like Glenbrook South, for the purposes of the GPDO.

16. Following a typical built form for some of the semi-detached houses hereabouts, the main axis of no. 21 is set at right angles to the one at no. 22. I agree with the Council that the eastern (or more correctly north-eastern) elevation is the principal elevation of the dwelling house at no. 21. A combination of factors points to this outcome: it is the widest (exposed) elevation of the property; it contains the main entrance door within an attractive porch constructed in brick and tiles, in addition to four windows including the most elaborate one (an arched staircase window); the entrance door leads directly to the hallway/staircase which is aligned parallel to this elevation; the yard in front of this elevation is open to public views, whilst the side yard in front of the narrow north-west facing gable is partly obscured by a tall boundary hedge; and the adjoining property's principal elevation clearly faces north-west towards the public footpath.
17. The planning history of the appeal property from 1997 and 1998 referred to by the appellant is of little relevance as there is no indication that the Council or any other party had to give any serious thought to the principal elevation of the dwelling in their descriptions of the developments proposed at those times.
18. The proposed dormer arrangement on the roof of the north-east facing elevation would therefore extend beyond the plane of an existing roof slope which forms the principal elevation of the dwelling house. However, neither party seems to have fully examined the issue of whether this principal elevation fronts a highway, although the appellant does say that "The elevation with the entrance door faces the garden of the adjacent property."
19. In fact, the principal elevation I have identified is separated by a substantial area of land in different ownership – two sizeable gardens at nos 19 and 20 Glenbrook South – from the highway in Glenbrook South. As such, this elevation, in my view, cannot be said to front Glenbrook South. It does not front on to the public footpath. I therefore find no conflict with the limitation at Class B.1 (c) of the GPDO.
20. The planning officer's report indicates that not enough information has been provided to assess whether one of the conditions set out in paragraph B.2 would be complied with. This is condition (c) which states that development is permitted by Class B subject to any window inserted on a wall or roof slope forming a side elevation of the dwelling house being (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 m above the floor of the room in which the window is installed. Given my interpretation about the principal elevation, the two side elevations are the two gable ends. The proposed bedroom windows in the loft in each gable end would be affected by this condition.
21. Whilst the Council has picked out this condition, I am not clear what information the Council used to assess condition (a) regarding the use of materials of similar appearance.
22. My reading of this case is that the appellant does not wish to embark on a project that deliberately flouts either of these conditions and that he had the difficulty of identifying which of the elevations could be classed as side elevations. He says he is willing for the item concerning the flank windows to "form part of a conditional approval."

23. As it is, the drawings are not clear. Paragraph B.2 imposes conditions subject to which permission is granted under Class B. This means that those conditions must be complied with. Failure to comply with the condition relating to the bedroom windows in the loft in each gable end (or for that matter the other conditions) would render the development open to enforcement action in respect of the breach of a condition, but would not take the development outside the provisions of Class B. Consequently, the absence of detail on the drawings concerning the two identified gable windows does not prevent a certificate being issued for the development, especially when clear reference to the conditions can be included in the certificate for the avoidance of doubt.
24. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR