
Appeal Decision

Site visit made on 17 October 2016

by K R Saward Solicitor

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

Decision date: 21 October 2016

Appeal Ref: APP/Z5060/X/16/3154440

164 Manor Square, Dagenham, Essex RM8 3RX

- 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 Nanu Miah against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 16/00493/CLU_P, dated 1 April 2016, was refused by notice dated 1 June 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 loft conversion with rear dormer and two front skylights.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class B to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO').

Reasons

3. In order for an LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the development would be lawful.
 4. The appeal property is a semi-detached house which has previously been extended to the side and rear. The appellant proposes a loft conversion involving the addition of a rear roof dormer and the insertion of front roof lights.
 5. Pursuant to Class B of the GPDO, the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development subject to certain limitations and conditions. Paragraph B.1 stipulates that development is not permitted by Class B if, amongst other matters, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres in the case of a semi-detached house.
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6. Guidance on interpretation of Class B is contained in the Government's Technical Guidance issued in April 2016¹. This explains that any previous enlargement to the original roof space in any part of the house must be included in the volume allowance.
7. There is no dispute that the volume of the proposed roof dormer would be 16.54 cubic metres. Where the parties differ in opinion is the cubic content of the roof for the existing two storey side extension.
8. According to the Council's calculations the additional roof space for the existing side extension is 40.375 cubic metres in volume. If this is correct, then the proposal would exceed the 50 cubic metre threshold within paragraph B.1(d) and planning permission would be required.
9. The appellant maintains that the Council has incorrectly taken the roof height as 3.8m instead of 2.5m and also applied an incorrect formula to ascertain the cubic content. Based on the appellant's calculations, the cubic content of the two storey extension roof is 26.88 cubic metres and as such the proposal would be within the parameters for permitted development. The Council arrived at the same figure as the appellant when considering a previous LDC application for a roof extension at this property.
10. The parties have each set out their methodology. The appellant has multiplied the depth x width x height and halved the total to arrive at the cubic content of the existing roof extension. The Council has applied the formula (depth x height) divided by 2 and then multiplied by the width. Each has used measurements taken from different points. The appellant's approach has been to take the extended hipped part of the roof. By drawing a line vertically upwards from the original end wall, only part of the extended roof has been measured. This is why the figure is much lower than the Council's.
11. Effectively what happened when the house was extended was that the hipped end was pushed along by about 2.5m. Thus, the increase in volume is that of the triangular prism 2.5m wide. The Council has applied the correct formula to establish that volume. The height must be measured up to the ridge which is around 3.8m. The parties agree that the depth (length) is 8.5m. Therefore, based on those figures the roof has already been extended by 40.375 cubic metres which corresponds with the Council's findings.
12. I am not satisfied that the figures supplied by the appellant are correct. As advised in the national Planning Practice Guidance², the onus is on the appellant to provide sufficiently precise and unambiguous evidence to show that, on the balance of probabilities the appeal should be allowed. Here, the appellant has not provided an accurate calculation of the volume of the previous roof enlargement. The information is not therefore precise.
13. In these circumstances, I consider that on the balance of probabilities the proposed rear dormer would not be permitted development under the provisions of Class B of Part 1 to Schedule 2 to the GPDO.

¹ "Permitted development for householders, Technical Guidance", published by the Department for Communities and Local Government

² Section on 'Lawful development certificates'

Conclusion

14. 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 loft conversion with rear dormer and two front skylights 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 Seward

INSPECTOR