
Appeal Decision

Site visit made on 19 September 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 8 November 2016

Appeal ref: APP/N5090/X/16/3143649
72 Warwick Avenue, Edgware HA8 8UJ

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter “the Act”] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter “LDC”].
 - The appeal is made by Mr Yehuda Neuberger against the decision of the Council of the London Borough of Barnet.
 - The application no: 15/02008/192, dated 27 March 2015 was refused by notice dated 27 April 2015.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Enlargement of loft area of a residential home.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellant against the Council. That application is the subject of a separate decision.

Preliminary matters

3. In its decision notice the Council described the proposal as “First floor side/front extension and loft extension”. The appellant (on the appeal form) describes the proposal as “Enlargement of loft area of a residential home”. I consider the appellant’s description to more accurately reflect the development for which an LDC is sought that being, essentially, an enlargement and alterations to the roof of the dwellinghouse to form additional living accommodation at first and second floor levels. I shall, therefore, adopt the appellant’s description for the purposes of the appeal.
 4. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 27 March 2015. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
 5. Reference has been made to the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the 2015 Order did not come into force until 15 April 2015 (after the date of the LDC application). The relevant Order for the purposes of this appeal is the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [hereafter “the GPDO”]. There are no material differences
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between the two versions of the Order insofar as the decisive issues in this appeal are concerned although some of the paragraphs are numbered differently.

6. On 13 April 2016 the Department for Communities and Local Government published "Permitted development for householders: technical guidance" [hereafter "Technical Guidance"]. This document updates and replaces the former technical guidance published in 2014. The new Technical Guidance raises no additional issues insofar as relevant to this appeal and, as it is the current guidance, it is the document to which I shall refer. Whilst not a definitive statement of the law, the Technical Guidance should as a general rule be followed unless a different interpretation has been given by the courts.
7. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for (including those relating to the accommodation needs of the appellant and the extent to which the proposal affects the character and appearance of the area) do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.

Main issue

8. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

9. The development could not have been permitted development under Class A of Part 1 to Schedule 2 of the GPDO because it would have involved an alteration to part of the roof¹. However, that would not have precluded it from being permitted development under Class B "*The enlargement of a dwellinghouse consisting of an addition or alteration to its roof*" and/or Class C "*Any other alteration to the roof of a dwellinghouse*".
10. Insofar as Class C² was relevant, the development would have been in accordance with it. It is agreed by the parties that the development would also have been in accordance with most of the permitted development criteria for Class B. I shall therefore focus upon the main areas of contention which concern the limitation at paragraph B.1.(b) and the condition at paragraph B.2.(b)(ii).

Limitation at paragraph B.1.(b)

11. The limitation at B.1.(b) states that development is not permitted by Class B if "*any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway*".
12. There is no dispute that the front wall of the property, which fronts the highway and contains main architectural features (e.g. the double height

¹ Class A to Part 1 of Schedule 2 to the GPDO sets out the permitted development rights for enlargement, improvement or other alteration of a dwellinghouse. Paragraph A.1(i)(iv) states that development is not permitted by Class A if it includes an alteration to any part of the roof of the dwellinghouse.

² Class C only concerns alteration(s) (not additions) to the roof of a dwellinghouse. In this case the rooflights are "alterations" and are in accordance with the permitted development provisions of Class C.

- bays), is comprised within the principal elevation as is the front facing hip to the main roof. The proposed development would not have extended beyond the plane of this existing roof slope.
13. However, the wording of this provision includes not just the main roof slope but "any" roof slope which forms the principal elevation and fronts a highway.
14. There is a small hipped roof section above the first floor bathroom/WC area adjoining the main roof. Whilst set well back, and not particularly prominent in views from the street, it has a roof slope which faces the street and to that extent it fronts a highway.
15. As to whether this section of roof is comprised in the principal elevation, the Technical Guidance explains that the principal elevation could include more than one roof slope facing in the same direction³. It cites examples of large bay windows on a front elevation and of an "L" shaped dwelling. In such cases (it advises) all such roof slopes will form the principal elevation and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes. Whilst there is no example which reflects the appeal case exactly, I cannot see that the Technical Guidance rules out from the meaning of "principal elevation" less prominent elements, those which are set back significantly and/or those which in themselves are not main features.
16. Returning to the statutory provision itself, I consider the word "elevation" in the phrase "principal elevation of the dwellinghouse" to be of particular significance. An "elevation" of a dwellinghouse is commonly understood to be a projection of the dwellinghouse, from any particular side, on a vertical plane. There is nothing in the wording of the statute to suggest that "elevation" could be given a narrower meaning when used in the context of a "principal elevation". Having identified that the front of the property is comprised in the principal elevation, it appears to me that the principal elevation in its totality is the same as the front elevation, that being the elevation shown titled "Existing Front Elevation" on drawing number 2014-0945 which accompanied the LDC application.
17. Thus, the principal elevation includes the bathroom/WC roof slope. The proposed roof extension would have extended beyond its plane. The development would have failed to meet the B.1.(b) limitation.

Condition at paragraph B.2.(b)(ii)

18. Paragraph B.2.(b)(ii) states that development is permitted by Class B subject to a condition that the enlargement shall be constructed so that - *"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"*
19. The enlargement would not have joined the original roof to the roof of a rear or side extension. Therefore the condition would have applied. Whilst the enlargement would not have extended beyond the main front, side or rear walls there is a small section of wall to the first floor bathroom/WC which

³ Page 33 of the Technical Guidance.

rises through the catslide roof, that being a wall of the original dwellinghouse.

20. This provision is not just concerned with the main external walls but “any” external wall. The development would have extended beyond the outside face of the bathroom/WC wall. Thus it would have failed to comply with condition *B.2.(b)(ii)*.

Other matters

21. My attention has been drawn to case law⁴ which found that previous decisions made by a local authority for similar developments may be a relevant consideration. That case concerned the exercise of planning judgement and the application of policy in reaching a decision on whether to grant planning permission. It is, therefore, distinguishable from the case which is before me which concerns a determination as to the lawfulness of development. However, I acknowledge that, as a broad principle, decision making should be consistent unless there are good reasons to the contrary.
22. The appellant has cited other similar developments in the locality which (I am told) have been granted LDCs by the Council. It is argued that the Council should have determined the appeal application in a manner consistent with these other decisions.
23. I have only limited information about these cases. The Council’s reasoning behind these decisions has not been fully explained. If the Council’s decision in this case is inconsistent (a matter on which I express no view) then it appears to me that there are “good reasons” as the development is not permitted development for the reasons I have explained above.
24. As a general rule the courts have held that a public authority should be free to perform its statutory duties in an unfettered manner as, otherwise, there could be effects upon the wider public interest. Bearing that principle in mind, I cannot see in this case that there would have been a binding obligation upon the Council to grant the LDC application even if there were other favourable decisions for similar developments on the public record. It seems to me that the Council was free to approach the decision with an open mind and to decide the application on the facts and circumstances as it saw them at the time. I acknowledge that this may appear unfair to the appellant but, as there were “good reasons” for the decision, I do not find it to fall outside of the principles for consistency in decision making as expressed in the cited case law.
25. It has been suggested that the Council’s decision is based on a technicality when the development is acceptable on its planning merits. In interpreting points of law the words of the statute should, as a general rule, be given their natural or ordinary meaning and applied accordingly without trying to make sense of what the legislation is intended to achieve. I cannot see that there is any sound reason for demurring from that legal principle in this case. It is through the process of a planning application that a more balanced approach can be taken and planning judgement can be applied.

⁴ *Guildford BC v Secretary of State for Communities and Local Government* [2009] EWHC 3531 (Admin)

Conclusion

26. For the reasons given above I conclude that the case for an LDC is not made out. I find that the Council's refusal to grant an LDC in respect of the enlargement of the loft area of a residential home was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR