

Appeal Decision

Site visit made on 28 November 2016

by K R Seward Solicitor

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

Decision date: 16 December 2016

Appeal Ref: APP/T5150/X/16/3157070

57 Priory Park Road, Brent, London NW6 7UR

- 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 Uttam Parmar against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/0290, dated 22 January 2016, was refused by notice dated 18 March 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 proposed rear dormer windows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The main issue is whether the Council's decision to refuse the LDC application was well-founded.
3. In an application and appeal for a LDC the planning merits are not relevant. Therefore, arguments concerning matters such as the benefits of the extended property, its lack of visibility from the street and other similar extensions in the vicinity do not fall to be considered. My decision rests on the facts of the case and the application of relevant planning law and judicial authority.

Reasons

4. In order for an LDC to be granted under section 192 of the 1990 Act, the burden of proving that the proposal would have been lawful at the time of the application rests on the appellant. The test of the evidence is the balance of probabilities. The issue in contention is whether or not the proposal would have constituted permitted development by virtue of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
 5. No 57 is a 2 storey mid-terrace period property. At the rear, it has a 2 storey outrigger projection with a sloped roof which at its highest point is below the eaves of the main roof. Given the presence of other such outriggers along the terrace, it is apparent the outrigger is original to the property. The application
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- proposes a rear dormer spanning the full width of the main roof partially joined to an extension that would be built above the roof of the outrigger.
6. Two roof lights are indicated on the front roof slope in drawing no. 140502-01-P0. These are not included in the description of the development applied for nor have details been provided to assess whether they would be permitted under Schedule 2, Part 1, Class C of the GPDO. My consideration is therefore confined to the proposed roof dormers.
 7. A previous application for a rear dormer and front rooflights was approved in 2015 upon the grant of a LDC. Because of this, the appellant believes that the Council's concern relates to the extension of the outrigger. That accords with the reasons set out in the decision notice giving rise to this appeal.
 8. Those reasons say that the proposed second floor extension to the rear outrigger would not comply with the requirements of Schedule 2, Part 1, Class A.1(c) and B.2(b) of the GPDO. However, Class A does not apply to development which would consist of or include an alteration to any part of the roof of the dwellinghouse (paragraph A.1.(k)(iv)). In this instance the proposal would involve extensions altering parts of both the main roof and the roof slope of the outrigger. As such, Class A does not apply to any part of the proposal.
 9. Class B of Part 1 of Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain conditions and limitations. The Council has not identified any applicable exclusion within the limitations in paragraph B.1. but paragraph B.1.(b) contains provisions similar to those under paragraph A.1.(c) which is given as a reason for refusal in the Council's decision notice. This provides that development is not permitted by Class B *if any part of the dwellinghouse, would as a result of the works, exceed the height of the highest part of the existing roof.* It is evident from the plans that no part of the enlarged roof would exceed the existing roof height to be excluded by paragraph B.1.(b).
 10. The Council considers that the conditions in paragraph B.2.(b) would not be met. This paragraph says *the enlargement must 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 is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.*
 11. The prefix in paragraph B.2.(b)(i) means that the conditions which follow in (aa) and (bb) only apply in cases where there would not be a hip to gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension.
 12. Due to the L-shape configuration and much lower roof height of the outrigger than the main roof, only the top of the outrigger extension would join the bottom of a section of the proposed roof dormer. It would not join the original roof to the roof of an extension and the situation contemplated in condition B.2.(b)(i) would not arise.

13. As such, the conditions in B.2.(b)(i)(aa) and (bb) apply. The Council's decision focuses on condition B.2.(b)(i)(bb) which requires an enlargement to be setback from the eaves by not less than 0.2m. This distance would not be maintained where the two extensions would join.
14. Advice on interpretation of the conditions in Class B is to be found in the Government's Technical Guidance issued in April 2016¹. This explains that the 0.2m set back from the eaves will be required unless it can be demonstrated that this will not be possible due to practical or structural considerations. One circumstance where it will not prove practical to maintain this 0.2m distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house.
15. This example addresses the scenario of a narrow gap having to be left between the main roof dormer extension and the dormer on a side extension if a 0.2m setback must be maintained on an L-shaped roof extension.
16. The submitted drawings indicate that there would be a 0.2m gap between rearward facing roof dormer and the outer edge of the eaves of the main roof. In order to avoid a narrow gap between the two extended elements, there would not be a 0.2m setback at the point of inter-connection. Such a gap could give rise to maintenance issues and from this viewpoint the proposal corresponds with the example given in the Technical Guidance of an occasion where it would not be practical to require a 0.2m setback.
17. However, nothing in the Technical Guidance overrides the need within the GPDO itself for compliance with condition (aa). Indeed, as guidance only, it cannot do so. Both conditions in B.2.(b)(i)(aa) and (bb) must be met for the proposal to amount to permitted development. This is clear from the use of the word "and" between (aa) and (bb).
18. The eaves of the original roof would not be maintained where the extension above the outrigger joins the original house and proposed roof dormer. This occurs because the outrigger does not join the main roof and so when the extension is built upwards it would cut across the eaves of the main dwelling. In consequence, condition (aa) would not be fulfilled. Unlike condition (bb), there is no flexibility within its terms.
19. Therefore, even if the proposal complies with condition (bb), it cannot be permitted development due to non-compliance with condition (aa).
20. The appellant has quoted from another appeal decision for 13 Beaconsfield Road, London² but that case was decided at a time when the Town and Country Planning (General Permitted Development) Order 1995 was in force and was written in different terms to the current GPDO which replaced it.
21. The appellant also says the Council has approved several similar roof extensions. That may be so, but I can only decide this appeal by applying the prevailing GPDO to the particulars of this case.
22. Having regard to the above, the appellants have not demonstrated that the proposed development would fulfil condition B.2.(b)(i)(aa) to constitute

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

² Appeal Ref: APP/T5150/X/14/2216750 dated 26 August 2014

permitted development under Schedule 2, Part 1, Class B of the GPDO.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of rear dormer windows 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