

Appeal Decision

Site visit made on 14 November 2016

by K R Saward Solicitor

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

Decision date: 19 December 2016

Appeal Ref: APP/G5750/X/16/3156867

56 Odessa Road, Forest Gate, London E7 9BH

- 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 Dan & Mrs Sam Cocker against the decision of the Council of the London Borough of Newham.
 - The application Ref 15/03680/CLP, dated 30 December 2015, was refused by notice dated 8 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 erection of a rear dormer extension and erection of a roof extension at second floor level above existing rear outrigger.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether at the time of the LDC application the proposed development would have constituted permitted development by virtue of the provisions of Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

3. 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 appellants, and the test of the evidence is the balance of probability.
 4. No 56 is a 2 storey mid-terrace period property. At the rear, it has a 2 storey outrigger projection with a sloped roof reaching a height just beneath 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 proposal is for a rear dormer spanning the full width of the main roof joined to an extension that would be above the roof of the outrigger in an L-shape.
 5. Class B of Part 1 of Schedule 2 of the GPDO authorises the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain conditions and limitations. There is no dispute that the proposal is not excluded by reason of the limitations in paragraph B.1. The point in contention
-

is whether the conditions in paragraph B.2. are met, specifically B.2.(b) which says that *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.

6. 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.
7. In this case, the proposed roof dormer would be joined to the walls of the proposed extension above the outrigger rather than joining the original roof to the roof of an extension. It would not join the two roofs. Therefore, the situation contemplated in condition B.2.(b)(i) would not arise.
8. The eaves of the original roof would not be maintained where the extension above the outrigger would join the proposed roof dormer. This is due to the lower height of the outrigger and the proposed extension being built upwards cutting across the eaves of the main dwelling up to a midway point. In consequence, condition (aa) would not be fulfilled.
9. The Council's reason for refusal of a LDC related specifically to the requirements in condition (aa). The appellants' submissions focus instead on the requirement in condition (bb) for an enlargement to be setback from the eaves by not less than 0.2m.
10. In this regard, the appellants have cited advice on interpretation of the conditions in Class B contained 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.
11. This example addresses the scenario of a narrow gap having to be left between the main roof dormer extension and the cheek of a dormer on a side extension if a 0.2m setback must be maintained on an L-shaped roof extension.
12. The submitted drawings indicate that there would be a 0.2m gap between the rearward facing roof dormer and the outer edge of the eaves of the main roof. In order to avoid a gap creating two discrete extensions necessitating two separate sets of internal stairs, there would not be a 0.2m setback at the point of inter-connection. In this regard, 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.

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

13. 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.
14. 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). Therefore, even if the proposal complies with condition (bb), it cannot be permitted development due to non-compliance with condition (aa).
15. The appellant has raised concerns over inconsistencies by decision makers in the application of Class B and its conditions. My attention has been drawn to various previous appeal decisions². Most were made in relation to the Town and Country Planning (General Permitted Development) Order 1995 at a time when the wording of the conditions in Class B of that Order differed notably from the current GPDO which replaced the 1995 Order. Furthermore, some of the decisions concerned the altogether different point of whether Class B applied in the given circumstances.
16. Only two of the cases were decided on the current wording of the GPDO. Of those, only in one (Appeal Ref: *APP/G5750/X/15/3135806* dated 29 February 2016) was there an issue regarding compliance with condition B.2.(b)(i)(aa). My findings are consistent with that decision in which the condition was found not to be met.
17. Since the date of the Council's decision, the appellants say the Council has approved several similar roof extensions. That may be so, but I can only decide this appeal by applying the GPDO to the particulars of this case.
18. Having regard to the above, the appellants have not demonstrated that the proposed development would fulfil condition B.2.(b)(i)(aa) to constitute permitted development under Schedule 2, Part 1, Class B of the GPDO.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a rear dormer extension and erection of a roof extension at second floor level above existing rear outrigger 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

² Appeal Refs: APP/H1515/X/15/3003475 dated 4 November 2015; APP/E5330/X/10/2131021 dated 11 January 2011; APP/E5330/X/10/2135185 dated 11 January 2011; APP/U5930/X/10/2143635 dated 13 April 2011; APP/Q5300/X/09/2106877 dated 23 December 2009; APP/U5930/X/10/213492 dated 17 March 2011; APP/Q5300/X/10/2120444 dated 10 August 2010; APP/Q5300/X/09/2113882 dated 1 February 2010; APP/B1605/X/15/3134171 dated 18 February 2016 and APP/U5930/X/10/2134331 dated 20 December 2010