

Appeal Decision

Site inspection on 15 February 2017

by John Whalley

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

Decision date: 28 February 2017

Certificate of Lawful Development - appeal ref: APP/M5450/X/16/3155693 16 Avenue Road, Pinner HA5 3HA

- 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 by the London Borough of Harrow Council to issue a Certificate of Lawfulness, (LDC).
- The appeal was made by Mr and Mrs B Leaver.
- The application, No. P/2333/16, dated 16 May 2016, was refused by a notice dated 15 July 2016.
- The application was made under s.192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development was sought was described in the application as: Rear single storey extension and alterations to side dormer. That was amended by the Council to: Single storey rear extension; infill extension between two dormers; installation of three rooflights to side roof slope; external alterations. That was the description of the proposal on the decision notice.

Summary of decision: The appeal fails. An LDC is not issued

Procedural matter

1. The London Borough of Harrow Council made an application for an award of costs against the Appellants. That is the subject of a separate decision.

Appeal property

2. The appeal property, No. 16 Avenue Road, Pinner, is a hipped roofed semi-detached dormer bungalow. It shares an access from Avenue Road with the adjoining dwelling, No. 14. The similar main buildings to each dwelling are narrow, 6m wide, facing Avenue Road. They have a depth of 18m. The gap between the 2 houses is filled along the rear 9m or so of the 18m depth with flat roofed car ports and garages to each dwelling. There is a residual uncovered area between the 2 dwellings at the frontage, about 4m wide and 9m deep.
3. Work on the project set out in the LDC application was well under way at the time of this appeal site inspection. However, I must deal with the state of the house at the time the application was made, on the assumption that no work had started and that the application was properly made under s.192(1)(b) of the Act.

The s.192(1)(b) lawful development certificate (LDC) application

4. The development for which an LDC is sought was described on the application as: "Rear single storey extension and alterations to side dormer". Prior to the issue of their formal decision, the Council revised the description to: "The erection of a single storey rear extension; infill extension between two dormers; installation of three rooflights to side roof slope; external alterations". Despite that, the Council said the description remained unclear in relation to the proposal to rebuild the garage and carport to form a new study and hallway to be incorporated into the house, as shown on the submitted drawings of the project. The Council considered that those works constituted a side extension. The Appellants said they did not necessarily agree with that, (e-mail - Appellants Agent to the Council, 8 July 2016). The Council also said the application plans appeared to show the work extending into No. 14 next door. Nevertheless, rather than declining to formally consider the application until the description of the application satisfied them, the Council issued their decision on 15 July 2016. The reason for the refusal to issue an LDC said: *"The submitted application, due to conflicting and incomplete details in the application form and submitted plans, fails to accurately and clearly described the development applied for. There is therefore insufficient information for the local planning authority to make a determination under the provisions of Schedule 2, Part 1, Classes A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended"*.
5. The Council did, however, comment on the proposed garage and carport works in an Informative to the decision. It said: *"It is noted that the submitted plans indicate conversion of the garage to habitable space, and the construction of an extension in place of the existing carport, however these elements have not been included in the development description. Nevertheless, the applicant is advised that this development as depicted does not appear to be lawful as permitted development for the following reason: It extends beyond a wall which forms a principal elevation of the original dwellinghouse contrary to A.1(e)(i) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015."*
6. The Council had thereby said the proposed works affecting the garage and carport area were not described in sufficient detail to demonstrate compliance with permitted development limits. In effect, the Council treated the application as invalid for uncertainty, despite the evident clarity of the application drawings. Having taken the view that the amended description of Mr and Mrs Leavers' project was still inadequate, I consider that it would have been better had the Council declined to decide the application until the description of the project at No. 16 was agreed. However, the Council said, at this stage, it would be a matter for me to decide whether to deal with carport part of the project. I do, below.
7. I have to consider whether the proposed extension works at No. 16 Avenue Road were adequately described in the application and shown by the submitted plans and whether the works would have been development permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the Order). Class A to the Order covers the enlargement, improvement or alterations to a house

such as rear or side extensions as well as general improvements including new windows and doors. Class B covers additions or alterations to roofs that enlarge the house. Class C covers other alterations to roofs such as re-roofing or the installation of roof lights. Class G covers the installation, alteration, or replacement of a chimney, flue or soil and vent pipe.

8. Guidance on the application of the Order on proposed alterations to a house is available in the Department for Communities and Local Government document, Permitted development for householders, Technical Guidance, (the Guidance). Where a project to enlarge or alter a house would involve works that would come under more than one of the Classes in the Order, it must meet all the limitations and conditions under the Classes relevant to the proposal, (the Guidance, page 6).
9. Firstly, the description of Mr and Mrs Leavers' project on the application form does not list each element of the proposed works. In particular, it makes no reference to the proposed work to the garage and carport. The amended description of the works, as set out in the decision on the application, is more specific as to the dormer works and adds: "installation of three rooflights to side roof slope; external alterations.". The term "external alterations" is vague. It could, however, include the garage and carport works. Also, the plans appended to the application were clear as to the extent of works. Because of that, I consider that the amended description of the works as set out in the decision was sufficient. The plans and the description are to be considered together so as to satisfy the requirements set out in Article 39 to Part 1. of the Town and Country Planning (Development Management Procedure) (England) Order 2015. In my view, the amended application description did not fail that test.
10. There were 4 main components to the application project. It was intended to increase the first floor accommodation by linking the 2 dormer windows in the north facing roof slope to form a long single dormer with 2 new windows in their original positions. Secondly, it was intended to fit 3 large roof lights in the south facing side roof slope. Thirdly, a single storey rear extension about 4m deep to the same width as the main building to the dwelling would be added. Lastly, a study and entrance hall to be incorporated into the house would replace the garage and carport on the southern side of the house.
11. The first floor dormer works was covered by Article 3, Schedule 2, to the Order at Part 1, Class B - The enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The proposed infilling between the 2 existing dormer windows in the north facing roof slope would clearly be an enlargement of the dwelling by increasing the space in the 2 affected first floor bedrooms. The application drawings showed that new windows would be provided. Condition B.2(c) says that any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse shall be - (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. The plans attached to the LDC application do not show intended compliance with that condition. Planning conditions cannot be applied to an LDC. As shown on the application drawings, the new dormer to the north-facing roof would not be permitted by the Order. The 3 proposed roof lights to the south facing side slope that would

otherwise be development permitted by Class C were not shown on the application drawings to comply with Condition C.2. That says: "Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse must be (a) obscure-glazed; and (b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.". The 3 roof lights would not have been permitted by the Order.

12. Removal of the chimney as part of the roof works would not comply with limitation B.1(e)(ii) to Class B. However, planning permission would be given elsewhere - by Class G, which specifically addresses the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse. That permission includes removal of a chimney.
13. The proposed rear extension would extend about 4m beyond the rear wall of the original semi-detached dwelling. Development is not permitted by Class A to the order if, A.1(f), subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and —
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height;

(g) until 30 May 2019, for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and —

 - (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse.
14. Where para. (g) applies, information is required to allow the Council to contact neighbours as part of a consultation. That was not done. Therefore, a rear extension over 3m deep on this semi-detached house would have required compliance with the procedure set out in condition A.4 to Class A.
15. Class A to the Order allows the enlargement, improvement or other alteration of a dwellinghouse, subject to limitations and conditions. Development is not permitted by Class A if - A.1(e) the enlarged part of the dwellinghouse would extend beyond a wall which - (i) fronts a highway, and (ii) forms either the principal elevation or a side elevation of the original dwellinghouse. A development to enlarge a dwelling house that is in front of a principal elevation wall that fronts a highway requires an application for planning permission.
16. It was the Council's contention that the south facing side elevation of No. 16 was its principal elevation. The Appellants said the narrow, road facing elevation was the principal elevation. The Guidance says that in most cases, the principal elevation will be that part of the house which fronts, (directly or at an angle), the main highway serving the house. It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
17. The Guidance goes on to say that the principal elevation could include more than one wall facing in the same direction; for example, where there are

large bay windows on the front elevation, or where there is an 'L' shaped frontage. In those cases, all such walls will form the principal elevation and the line for determining what constitutes "extends beyond a wall" will follow those walls. I consider that to be the situation here; that is, the principal elevation of No. 16 Avenue Road comprises the west, road facing elevation, the south facing elevation up to the garage and the garage's west facing wall, a conclusion similar to examples shown on p.12 of the Guidance. I discount the plastic roofed carport as forming part of the principal elevation as it had no door or front wall. That being so, the proposed enlargement of the house at No. 16 in front of, and incorporating the garage, fails to comply with limitation A.1(e) to Class A of the Order and would not be permitted development.

18. My conclusion is that the only part of the appeal project that would be lawful would be the removal of the chimney. However, it would be of little use to provide a certificate of lawfulness for that small part of the proposals in isolation.
19. I conclude that the Council's refusal to issue a certificate of lawful development for the application as made was justified, albeit for reasons dissimilar to those of the Council.

FORMAL DECISION

20. The refusal by the London Borough of Harrow Council to issue a Certificate of Lawfulness for the erection of a single storey rear extension; infill extension between two dormers; installation of three rooflights to side roof slope; external alterations at No. 16 Avenue Road, Pinner HA5 3HA was justified. A certificate of lawfulness is not issued.

John Whalley

INSPECTOR