
Appeal Decision

Site visit made on 15 February 2017

by Simon N Hand MA

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

Decision date: 9 March 2017

Appeal Ref: APP/N5090/X/16/3160315

97 Lichfield Grove, Finchley, London, N3 2JL

- 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 Ronan O'Mohony against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/4644/192, dated 13 July 2016, was refused by notice dated 10 August 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 a rear dormer and roof extension to facilitate loft conversion. Addition of No. 2 rooflights to front elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development taken from the Council's refusal notice as it better describes the works proposed.

Reasons

3. No 97 is a two storey semi-detached dwelling with a large, flat roofed, two-storey rear projecting wing. The appellant claims, and there is no reason to dispute this, that the rear projection is part of the original dwelling. As I saw on my site visit it appeared to be constructed of the same materials and in the same style as the main building and a number of neighbours had identical rear projections. The proposal consists of two main elements: a typical dormer to run across the whole of the rear roof slope to create third floor of accommodation; and the roof extension which refers to a roughly cubic structure added onto the flat roof and linked to the dormer to create a roughly 2.2m square, flat roofed bathroom.
4. The Council originally considered the roof extension to fall within Class A of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015 which deals with the "*enlargement, improvement or other alteration of a dwellinghouse*" and so was not permitted development as it failed A.1(i), as it was "*within 2m of the boundary*" (it would actually be right on the boundary) "*and the height of the eaves of the enlarged part would exceed 3m*". In their

statement they agreed this was not the correct Class and the proposal should be considered only against Class B, which deals with *"the enlargement of a dwellinghouse consisting of an addition or alteration to its roof"*. Nevertheless it failed to meet the condition stipulated in B.2(b)(ii) 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"*.

5. The explanation for this view is that the flat roof of the rear projection is slightly lower than the eaves level of the main part of the dwelling and there is a section of rear facing wall above the flat roof and below the rear eaves. The roof extension projects beyond this section of wall. There is no doubt this is an accurate description of the proposal. The appellant, however, argues the proposal is in fact in accord with both Class A and Class B, but that in any event Class A is irrelevant. I shall deal with the appellant's arguments below.
6. It is not controversial that a proposed development can be subject to more than one Class within the permitted development rights granted by the GPDO. In my view the Council were quite correct when they initially measured the proposal against both Class A and Class B. The rear dormer would clearly be an addition to the roof and would fall within Class B, but the rear projection which would contain the bathroom would be more than an *"addition or alteration to the roof"*. It is, in effect, another storey placed on top of the flat roof. It undoubtedly does add to and alter that roof, but it is a matter of fact and degree when a proposal can also be described as doing more than that. For example if the rear projection was only single storey, adding a two storey extension onto it would clearly not fall just within Class B but would also be an enlargement of the dwellinghouse and so fall also within Class A. In my view, the proposed rear projection is effectively a new storey added to the rear wing and so also falls within Class A.
7. Given that conclusion I consider it falls within the exclusion of A.1(i) as it is within 2m of the boundary and the eaves are higher than 3m. The appellant argues that the rear projection is a part of the original building and has eaves that are already above 3m. The existing eaves height is not altered and so the proposal is not outwith A.1(i). I consider this is a misreading of this part of the GPDO. It is clear to me that it refers to the eaves of the *enlarged part* of the dwellinghouse, that is the proposed rear projection, and those eaves must not be over 3m above ground level. As they clearly would be the proposal is not permitted development.
8. Given the Council's reluctance to accept the rear projection should fall within Class A I have also considered the arguments for Class B. It is clear that B.2(b)(ii) means that no part of the proposal should extend beyond any external wall of the original dwellinghouse. The proposed rear projection does extend beyond one of the walls of the original dwellinghouse as described by the Council. The appellant seems to accept this but points out that B.2(b)(ii) contains a get-out clause as it begins *"other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension..."*. The Council argue this only applies when an 'L' shaped dormer is linking the *original* roof to the roof of an *extension*, exactly as the clause is worded. In this case the rear projecting wing whose roof is being linked to the main roof is not an *extension* as it forms part of the *original* dwelling.

9. The appellant points to the Government's Technical Guidance for Householders which says "*The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other*". Therefore, he argues, the word *extension* in the GPDO does not mean a new addition to the house. Whatever the guidance means I do not consider it applies to this case. Firstly, because the proposal before me is not an "*L shaped dormer*" but a dormer linked to an extra floor. I do not think the definition of a dormer window can be stretched to include the large cubic extension proposed. Secondly, the proposal is not linking one roof to another, as the roof extension element is linking the rear projection to the main back wall of the dwelling. Thirdly, the technical document is only guidance. The wording of the GPDO is, in my view, quite clear in that it only allows an enlargement to link the original roof to an extension. The rear projecting wing cannot be described as an extension as it is part of the original dwelling. Consequently the proposal also fails the condition in Class B.
10. The appellant also refers to another decision by the Council for an 'L' shaped dormer which was considered to be permitted development, but that was for a linking dormer across two pitched roofs, which is different, but in any event I have to consider this proposal on its merits. The other decisions from neighbouring authorities have no plans supplied so it is impossible to tell exactly what the proposals were. For all the above reasons the proposal is not permitted development and a lawful development certificate cannot be issued.

Simon Hand

Inspector