

Appeal Decision

Site visit made on 10 April 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 3 May 2017

Appeal Ref: APP/T5150/X/16/3165951
115 Holland Road, Brent London NW10 5AT

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development ['LDC'].
 - The appeal is made by Mr and Mrs A Macilwane against the Council of the London Borough of Brent.
 - The application ref 16/1812 is dated 29 April 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 development is sought is described in the application form as follows: *building up of both party walls at roof level, removal of rear pitched roof and construction of a rear facing dormer with a flat roof. Conversion of loft space to a habitable room with en-suite bathroom.*
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Decision

1. The appeal is dismissed.

Reasons

2. The development has already been carried out but I need to consider whether, at the date when the application for the LDC was made, the proposed development would have been lawful.
3. The claim is a simple one, namely, that the development proposed would not require express planning permission by virtue of permitted development ['PD'] rights set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']¹. Deemed planning permission is granted by virtue of Article 3(1). Classes of development described as PD are set out in Schedule 2 of the GPDO. Class B relates to development comprising the enlargement of a dwelling-house consisting of an addition or alteration to its roof. Paragraph B.1 and B.2 sets out limitations and conditions, B3 and B4 interpretation. To assist in the interpretation of the GPDO, the Department published document titled: *Permitted Development Rights for Householders Technical Guidance* ['TG'] revised April 2017.
4. No. 115 is a terraced dwelling-house and the dormer window would be located to the rear roof slope. Submitted details show it would be 4.4 m deep, 5.84 m wide and 3.1 m high. The cubic content is said to be 39.83 m³. However, this calculation excludes the party parapet walls that have been increased in height

¹ The GPDO has been amended by statutory instrument amendment order 2016 no. 332, but there is no alteration to Class B.

- to form side cheeks to the roof addition. The side walls exceed the height of the dormer window and form parapet walls.
5. The disagreement is whether the development would comply with exception B.1(d) sub (i) of the GPDO: development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house.
 6. When calculating the cubic content of the resulting roof space, Mr and Mrs Macilwane argue the volume created by the increase in height of the parapet walls should not be taken into account, because additional roof space is not created. The Council's unchallenged evidence is that if the volume created by the increase in height of the party walls is included the limitation set in paragraph B.1(d) sub (i) would be exceeded.
 7. Exception B.1(d) focuses on the enlargement of the roof forming part of Class B. For the purposes of Class B *resulting roof space* means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not. Evidently, increase in the height of the side party walls is part and parcel of operations comprised in the enlargement of the dwelling-house consisting of an addition to its roof. This is because the side cheeks act as side walls to the dormer window. As a matter of fact and degree the volume created by the increase in height of the party walls should be included in the cubic content calculation.
 8. I see no practical or lawful reason to exclude the volume created by the new party walls from the cubic content on the ground that they do not result in additional useable roof space. By including the parapet walls, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres. Exception B.1(d)(i) would not be met and so development would not be PD if instituted at the date of the LDC application. There is nothing before me to indicate my findings are inconsistent with the TG.
 9. Having considered all other matters, on the balance of probabilities, my conclusion is that the appeal should fail, because the proposed operations would not be lawful and express planning permission is required. I will exercise accordingly the powers transferred to me in section 195 (3) of the Act as amended.

A U Ghafoor

Inspector