

Appeal Decision

Site visit made on 27 April 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 24 May 2017

Appeal Ref: APP/T5150/X/16/3164641
35 Tubbs Road, London NW10 4RA

- 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 (hereinafter "certificate").
 - The appeal is made by Mr Sandro Mosquera against the decision of the Council of the London Borough of Brent.
 - The application ref. 16/3521, dated 8 July 2016, was refused by notice dated 4 October 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 is sought is described at section 8 of the application form as "Certificate of lawfulness for proposed rear dormer window, second floor extension to the rear outrigger and 2 velux windows in front roof plane to dwellinghouse."
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operations which are considered to be lawful.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.
4. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probability.

Main issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.
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Reasons

6. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
7. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO").
8. No. 35 Tubbs Road is a 2-storey terraced house. At the rear, similar to other properties along the terrace, there is a 2-storey outrigger which extends across about half the width of the rear elevation. The outrigger has a single sloping roof, the top of which comes to just below the eaves of the main rear roof.
9. The proposal is to construct a rear dormer spanning the full width of the main roof, giving onto a dormer-like second floor extension which would be added over part of the rear outrigger and to insert 2 roof lights in the front roof slope. The scheme would provide an attic room, a bathroom and a study.
10. The Council argues that the extension above the outrigger would not form a roof extension that would fall within Schedule 2, Part 1, Class B of the GPDO. The Council says that the existing roof over the outrigger has a shallow pitch, so much so that it is almost flat. It finds that "In this case the slight slope above the outrigger which is set down significantly from the main roof does not form an area that can be extended under class B of the GPDO 2015." Consequently, the Council says that Class A applies. There is no dispute that if Class A does apply, there are 2 limitations within that Class relating to the height of the eaves of the enlarged part of the dwellinghouse which would not be satisfied. Conversely, it is the appellant's case that Class B should prevail.
11. The Government's Technical Guidance *Permitted development rights for households*, which gives guidance on the operation of the GPDO and was last updated in April 2017, does not expressly address the situation proposed in this appeal. In describing the structure of the rules on permitted development, it notes:

"**Class A** covers the enlargement, improvement or alterations to a house such as rear or side extensions..."

"**Class B** covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows."

It seems to me that each case has to be judged as a matter of fact and degree, with various factors needing to be weighed in the balance.
12. I agree with the appellant that neither the eaves nor the top of the sloping roof of the outrigger is set down significantly from the eaves of the main roof. The dormer-like extension over the outrigger would still join the dormer proposed for the main roof. There is a noticeable slope to the outrigger's roof. It is not a flat or virtually flat roof. Whilst the volume of existing roof space in the outrigger that would be utilised in the scheme might be less than in a scheme that involves an outrigger with a steep roof pitch, this part of the appeal project can still be viewed as one involving an enlargement of the roof space through an addition to the roof.

13. The same Technical Guidance advises that:

"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."

In my view, this offers a great deal of flexibility to such roof constructions. What is being proposed here seems to fit in with this advice reasonably well. The scheme entails, in effect, an L-shaped dormer addition across the upper rear roof planes of this house that differ in terms of their shape and the level of their pitch.

14. The appeal scheme does not involve an extension to the dwelling's footprint or any building or rebuilding of any external elements below roof level. The dormer-like extension over the rear outrigger would be positioned within the confines of the roof and my attention has not been drawn to any proposed material changes or vertical extensions to the outer walls of the outrigger.
15. In my view, as a question of fact and degree, this proposal would involve: the enlargement of a dwellinghouse consisting of additions and alterations to its roofs (main roof and the roof slope of the outrigger), falling within Class B; and other alterations to the roof of the dwellinghouse falling within Class C, insofar as the 2 proposed velux windows in the front roof plane are concerned.
16. For the avoidance of any doubt, paragraph A.1 (k) (iv) in the GPDO says that development is not permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse. As such, Class A does not apply to any part of the proposal.
17. I have taken into account the 2 appeal decisions referred to by the Council in its written statement. Both of them relate to properties in the borough of Brent. The first one, issued under ref. APP/T5150/X/11/2155743 at No. 99 Priory Park Road, seems to work against the Council's key argument as it was found that the proposed loft conversion with an L-shaped dormer fell to be considered under Class B and not Class A. The second one, issued under ref. APP/T5150/X/12/2177462 at No. 21 Tennyson Road, is included at Appendix 2 of the appellant's statement of case. This concerned development proposed over the top of a flat-roofed outrigger. The roof of the outrigger at No. 35 Tubbs Road cannot be similarly described.
18. The Council has not commented upon the 5 relevant appeal/Councils' decisions (including one in Brent at No. 8 Radcliffe Avenue with ref. 14/0700) provided by the appellant at Appendices 1 and 3 of his statement of case. All these examples involved sizeable extensions over rear outriggers and all were assessed under Class B.
19. The Council has not highlighted to me any reason why the proposal would not comply with the limitations and conditions in GPDO paragraphs B.1 and B.2 or C.1 and C.2, when assessing the scheme under Classes B and C.
20. On the balance of probability, I am satisfied that the proposal would have been lawful at the time the application was made.

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR