
Appeal Decision

Site visit made on 19 May 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 15 June 2017

Appeal Ref : APP/G5180/X/16/3165829

Land at 42 Station Road, West Wickham, BR4 OPR.

- 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 lawful development certificate by the Council of the London Borough of Bromley dated 2 December 2016.
- The appeal is made by Mrs Suzanne Ismail.
- The application ref DC/16/04673/PLUD was dated 7 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 lawful development certificate is sought is rear hip to gable loft conversion including balcony space and erection of side dormer to create access from downstairs.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) sets out permitted development rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B.1 (e) (i) provides that those rights do not apply if the development includes the construction or provision of a verandah, balcony or raised platform.
4. The issue in dispute between the parties is whether the proposed development includes a balcony. In all other respects the parties agree that Class B is satisfied and on the evidence before me I do not conclude otherwise.

5. Balcony is not defined in the GPDO. The Government's Permitted Development Rights for Householders: Technical Guidance April 2016 in place at the time of the application (the Technical Guidance) states that 'a balcony is understood to be a platform with a rail, balustrade or parapet projecting outside an upper storey of a building'. Whilst not determinative the Technical Guidance provides useful guidance on the interpretation of the GPDO. The Oxford English Dictionary describes balcony as 'a platform enclosed by a wall or balustrade with access from an upper floor window or door'. The Appellant refers me to the Cambridge dictionary definition, namely 'an area with a wall or bars around it that is joined to the outside wall of a building on an upper level'.
6. The appeal site is a detached residential dwellinghouse. Drawing PR 020 shows a 1 metre deep external area set back under a roof canopy. The plan shows a platform projecting outside an upper storey of the building. It does not form part of the internal space, projects beyond an external wall and is not fully enclosed. I do not consider the absence of a rail, balustrade or parapet fully enclosing the area as determinative. Applying a common sense definition of balcony I conclude that it is reasonable to describe the design as a balcony. It is a platform joined to an external wall with access from the upper floor. Indeed the Appellant described a 'balcony space' in the description of development and annotated the design as 'balcony' on the plan.
7. I conclude that on balance it would be reasonable to describe the proposed design as a balcony. It therefore follows that Class B.1 (e) (i) is not met and therefore the development does not benefit from permitted development rights and constitutes development for the purposes of the 1990 Act (as amended).
8. For the reasons given above I conclude that the Council's refusal to grant a LDC for the proposed loft conversion was well-founded, and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

9. The appeal is dismissed.

S. Prail

Inspector