

Appeal Decision

Site visit made on 5 June 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 15 June 2017

Appeal Ref: APP/G5750/X/16/3163045

235 Monega Road, Manor Park, London E12 6TU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ['the Act'] against a refusal to grant a certificate of lawful use or development ['LDC'].
 - The appeal is made by Mr K Pindoria against the decision of the Council of the London Borough of Newham.
 - The application ref 16/01897/CLP, dated 20 June 2016, was refused by notice dated 13 September 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is roof extension.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue is whether, at the time of the LDC application, the proposed development would have constituted permitted development ['PD'] by virtue of the provisions of Article 3 and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. In order for an LDC to be granted under section 192 of the Act, the burden of proving that the proposal would have been lawful rests on the appellant, Mr Pindoria, and the test of the evidence is the balance of probability.
3. No. 235 is two-storey terrace dwelling-house. It has a two-storey outrigger projection with a mono-pitched roof reaching a height just beneath the eaves of the main roof. I concur with the appeal parties it is an original feature of the property because of its design; the type of material used match the main building.
4. The proposal can be described as the erection of a rectangular shape dormer window to rear of the appeal building. It would span the full width of the building's roof joined to an extension that would be positioned over the roof of an outrigger. The latter would be set lower than the dormer window and the enlargement would form a stepped 'L-shape' roof addition, which is shown in drawing no. 235 FP rev 4¹. There would be two skylights to the front roof slope.
5. Mr Pindoria's claim is a simple one, namely, that the development would not require express planning permission because it benefits from deemed planning

¹ Email dated 7 June 2017 confirming the LDC plan. The agent submitted drawing no. 235 FP 03 rev 5 illustrating an amended proposal. However, the drawing referred to in paragraph 4 above was before the Council at the time the LDC application was determined. I will proceed on that basis.

permission. The Council's reason to refuse the LDC application is that the extension of the parapet walls should not be considered an alteration or addition to the original dwelling's roof. Having directed itself to PD rights in Class A of the GPDO, it concluded that, by reason of the excessive eaves height, the proposal would not be PD. For the following reasons, I disagree with the Council's approach.

6. Class A permits development comprising enlargement, improvement or other alteration of a dwelling-house subject to conditions and limitations. Class B is specific to the enlargement of a dwelling-house consisting of an addition or alteration to its roof. Like other properties in the block, no. 235 includes a low wall projecting above the level of its pitched roof forming a solid barrier as well as an architectural feature; a chimney rises above on one side. The parapet walls do not function as elevations but as a break between buildings. The upstands are an integral part of the roof structure because of their design and layout. The proposal would involve the vertical extension of the parapet walls. Nevertheless, I consider that the increase in the height of the party walls is integral to operations comprised in the enlargement of the dwelling-house consisting of an addition to its roof all of which amount to a single building operation. I find the development, as a whole, should be assessed against Class B of the GPDO.
7. The enlarged part of the dwellinghouse is the part which is proposed within Class B as the enlargement². In principle, the enlargement is permitted where it concerns a dwelling, as defined, unless it is subject to one of the exceptions in paragraph B.1. The conditions in B.2 must also be met. When assessing what comprises the relevant operational development in the enlargement pursuant to Class B, it is necessary and reasonable to consider the development on a holistic basis. It would be important to consider what the particular operational development is proposed in considering whether that development, as a whole, falls within the scope of Class B PD rights. It should be borne in mind that slight differences from the physical limitations, tolerances and conditions bring the development outside the scope of the GPDO provisions, and even small or immaterial differences can oust the PD rights in respect of a particular proposal. In order for the proposal to benefit from deemed planning permission, the development must comply with all of the relevant limitations and conditions. To assist in the application of the GPDO, the Department published document titled: *Permitted Development Rights for Householders Technical Guidance* ['TG'] revised April 2017.
8. The disagreement is whether the roof addition would comply with exception B.1(d) sub (i) of Class B: development is not permitted 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. Exception B.1(d) focuses on the enlargement of the roof and B.3 states that 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.
9. The Council assert that the resulting roof space cubic content would be 43.35 whereas Mr Pindoria claims that it would be 39.1. However, the latter calculation excludes the volume created by the increase in the height of the party parapet walls, which would form side cheeks to the roof addition. The side walls would slightly exceed the height of the addition to form upstands. Evidently, increase in the height of the side party walls would be part and parcel of operations comprised

² See *R (oao Hilton) v Secretary of State for Communities and Local Government* (official Court transcript cites *Secretary of State for Home Department*) [2016] EWHC (Admin) and *Eatherley v LB Camden and James Ireland* [2016] EWHC 3108 (Admin).

in the enlargement of the dwelling-house consisting of an addition to its roof. In substance, the cheeks would function as walls to the roof addition and act as party walls between properties. As a matter of fact and degree, I find that the increase in the height of the upstands should be included in the cubic content calculation when assessing compliance with B.1(d).

10. In support of the argument that the volume created by the parapet walls should be excluded from the cubic content calculation, Mr Pindoria cannot rely on the wording of paragraph B.4. This states the following: *'For the purposes of paragraph B.2(b)(ii), roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the external wall of the original dwellinghouse are not to be considered part of the enlargement'*. The emphasised and underlined text clearly indicates that this section only applies to the interpretation and application of paragraph B.2(b)(ii) to Class B, which I shall return to later.
11. For completeness, I have also examined the TG, but there is nothing to indicate my findings are inconsistent with it. Page 11 states that chimneys, firewalls, parapet walls and other protrusions above the main roof ridge line should not be taken into account when considering the height of the highest part of the roof of the existing house. This specifically relates to an assessment of the highest part of the roof of the existing house when applying paragraph A.1(c) in Class A and paragraph B.1(b) in Class B. Similar advice is given in relation to paragraph A.1(d). There is nothing to suggest the volume created by parapet walls should be discounted when assessing compliance with paragraph B.1(d) of Class B.
12. The agent refers to one of my decisions at 14 Lemna Road, London E11 1HX in the Borough of Waltham Forest³. That appeal related to a LDC for the erection of a single-storey rear extension, which included a sidewall that straddled a shared boundary. The local planning authority took the view that the new extension would be partly built outside of no. 14's curtilage, whereas the roof addition includes alterations to the parapet walls that would be integral to the enlarged part of the host dwelling. Therefore different considerations apply and there are material factual differences between the proposals. In any event, I should remind the appeal parties that, in the context of an LDC appeal, I must examine the factual evidence in a particular case about the history and planning status of the building or land in question, and the interpretation of any planning law or judicial authority. That is what I have done in this case.
13. Taking the proposed development as a whole, I find no practical or lawful reason to exclude the altered party walls from the cubic content of the resulting roof space on the ground that they do not result in additional useable roof space⁴. 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; this finding is fatal to Mr Pindoria's claims, but that not the end of the matter.
14. Paragraph B.2(b) of Class B states that the enlargement must be constructed so that - *(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension — (aa) the eaves of the original roof are maintained or reinstated; and (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not*

³ Appeal ref: APP/U5930/X/10/2132832. In his 9 June email the agent cites the case of *Sutchffe Rouse and Hughes v Calderdale Borough Council* [1983] JPL 310.

⁴ *Richmond-upon-Thames LBC v SSE and J A P Neale* [1991] JPL 948 applied.

less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. The agent attempts to demonstrate how the proposal would meet condition B.2(bb)⁵. However, I consider that the preceding text in paragraph B.2(b)(i) means that the conditions which follow in (aa) and (bb) only apply in cases where there would not be a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension.

The drawing illustrates that the proposed dormer window would not join the original roof to the roof of the extension over the outrigger. The eaves of the original roof of the main building would not be maintained or reinstated where the extension above the outrigger would join the proposed roof dormer. This is due to the lower height of the outrigger and the extension being built upwards cutting across the eaves of the main dwelling up to a midway point to form a new bedroom. Consequently, condition (aa) would not be met because of the enlargement's design and layout.

15. Additionally, there is no cogent explanation as to how the proposal would comply with condition B.2(b) sub (ii). It states: '*...the enlargement must be constructed so 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*'. As I have already said elsewhere, the dormer window would not join the original roof to the roof of the extension above the outrigger because of the proposed stepped L-shape design and layout of the enlargement. It is therefore apparent to me that the enlargement would extend beyond the outside face of the original dwelling's rear external wall. The scheme would also fail to comply with condition B.2(b)(ii).
16. Drawing all of the above threads together, as a matter of fact and degree, I find that the proposed development would fail to comply with physical tolerance set out in paragraph B.1(d)(i). Even if an alternative view prevails on the latter point, Mr Pindoria does not explain with sufficient clarity how the proposal would satisfy condition B.2(i)(aa) and (ii).

Conclusion

17. On the facts and circumstances of this particular case, I find that, on the balance of probabilities, the proposed development would not have constituted PD by virtue of Article 3, Schedule 2, Part 1 Class B of the GPDO at the date of the LDC application.
18. For all of the reasons given above, having regard to all other matters and the powers transferred to me in s195(3) of the Act, I conclude that the appeal should be dismissed.

A U Ghafoor

Inspector

⁵ Paragraph B.2(bb) – the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.