

Appeal Decision

Site visit made on 26 May 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 26 June 2017

Appeal Ref: APP/G3110/X/17/3166798
8 Stapleton Road, Headington, Oxford OX3 7LU

- 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 Tim Massingham against the decision of Oxford City Council.
 - The application ref. 16/01577/CPU, dated 13 June 2016, was refused by notice dated 4 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 is sought is described at section 8 of the application form as a *loft conversion*.
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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.
 5. The description of the proposal is more comprehensively recorded on the Council’s decision notice and section E of the appeal form as *formation of rear dormer window and formation of Juliet balcony and insertion of roof lights in association with loft conversion*. I have proceeded on that basis.
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6. The appellant's surname in the heading above is taken from section A of the appeal form and the submitted plan under the word *Client*, noting that the surname *Mathingham* is given at section 1 of the application form.
7. No plans are listed on the Council's decision notice. The parties confirmed at the site visit that the drawing number of the relevant plan is DD 7278.1 A CL and not DD 7278.1 CL as stated at section 7 of the application form.

Main issue

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

Reasons

9. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
10. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO").
11. No. 8 Stapleton Road is a 2-storey detached house. It has a 2-storey, rear-projecting wing (outrigger) which extends across about half the width of the rear elevation. The outrigger has a single sloping roof, the top of which joins the main rear roof about halfway up its plane.
12. The proposal is to construct a rear dormer spanning across a substantial part of the main roof slope and the roof of the 2-storey rear outrigger. This L-shaped extension would provide a bedroom, a bathroom and a study at second floor level. There would be 2 roof lights in the main front roof slope. A Juliet balcony would be fixed across the rear-facing, second floor bedroom window.
13. 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. Consequently, the Council says that Class A applies. The decision notice states that "The outriggers are paired and set down below the level of the main roof of the dwelling, the development walls extend above the outrigger roof and therefore this is an extension to the first floor of the house not just an alteration to the roof." 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, chiefly on the basis that the addition and alterations affect one continuous, connected roofscape (outrigger roof and main rear roof).
14. 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.

15. The wording in the decision notice is incorrect in that the subject rear outrigger is not paired with another one. Whilst it is correct that the proposal is to build on top of the outrigger, that part of the scheme cannot be considered in isolation as an extra storey. Being only marginally lower in height, it would comfortably adjoin the loft conversion (dormer) on the main roof which in itself would involve an extra floor of accommodation. Moreover, the volume of the existing roof space in the outrigger would be utilised in the scheme and the outrigger's roof would not cease to exist. 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 original outer walls of the outrigger. No part of the development would exceed the highest part of the existing roof, the ridge over the main roof. I find that the proposed work, including the addition over the rear outrigger, would amount to an addition or alteration to the roof of the appeal property.

16. 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 spread across the 2 upper rear roof planes of this house that differ in terms of their shape and the level of their pitch.

17. In my view, as a question of fact and degree, this proposal would involve: the enlargement of a dwellinghouse consisting of an addition and alterations to its roof (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 roof windows in the front roof plane are concerned. The Technical Guidance confirms that a "Juliet" balcony, where there is no platform (as here) and therefore no external access, would normally be permitted development.
18. 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.
19. I have taken into account the 4 appeal decisions referred to by the parties, three of which relate to properties in Oxford. At No. 16 Argyle Street (appeal ref. 3130966), no part of the rear outrigger reached the main roof. Thus, the

box-like extension proposed over the outrigger seemed to be disproportionately large and a notable part of the extension would have abutted the first floor wall at the back of the house. The Inspector was entitled to reach the view that the development did not fall to be considered under Class B. At No. 118 Southfield Road (appeal ref. 3153500) the construction of box dormers to the rear was based on a scheme very similar to the one proposed in the appeal before me. It was assessed by the Council and the Inspector under Class B, with the issue relating to the limitation on volume. At No. 2 Piper Street (appeal ref. 3149388) the Inspector found Class A to be the incorrect Class. He went on to find an infringement of condition B.2 (b) in the particular circumstances of that case. Neither the Council's delegated report nor its decision notice in respect of the application the subject of this appeal raised this matter of non-compliance with condition B.2 (b). Like the appellant at paragraph 4.14 of his statement of case, I prefer the flexible interpretation of this condition offered in the Technical Guidance and quoted in paragraph 16 of this appeal decision, as applied to the particular development proposed in this appeal.

20. Fourthly and lastly, the Council has drawn my attention to an appeal decision from the London Borough of Islington at No. 83 St Thomas's Road (issued under appeal ref. APP/V5570/X/14/2220935). The passage quoted by the Council does not appear in the decision. That scheme involved the extension of upper floor accommodation over an existing flat-roofed first floor element of the house and was held to be an extension to the second floor of the house (Class A) rather than a roof extension (Class B). The subject appeal scheme is wholly different to that scheme such that any meaningful comparisons cannot be drawn.
21. I agree with the appellant that the proposal would comply with the limitations and conditions in GPDO paragraphs B.1 and B.2 and C.1 and C.2, when assessing the scheme under Classes B and C.
22. On the balance of probability, I am satisfied that the proposal would have been lawful at the time the application was made.
23. 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