The Planning Inspectorate

Appeal Decision

by Thomas Shields MA DipURP MRTPI

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

Decision date: 3 July 2017

Appeal Ref: APP/G3110/X/17/3170778
46 Middle Way, Oxford, OX2 7LG

- 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 (LDC).
- The appeal is made by Miss Victoria Smith against the decision of Oxford City Council.
- The application Ref 16/03150/CPU, dated 28 November 2016, was refused by notice dated 20 January 2017.
- 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 use or development is sought is formation of habitable rooms in roof space with rear dormers.

Decision

1. The appeal dismissed.

Main issue

2. It is common ground between the parties that the proposed development does not benefit from the planning permission granted by the provisions of Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). I also hold that view.

3. The main issue therefore is whether at the time of the LDC application the proposed development would have constituted permitted development (PD) by virtue of Article 3 and Schedule 2, Part 1, Class B of the GPDO.

Reasons

4. In any application for a LDC the burden of proof is on the applicant, on the balance of probability, to demonstrate that the proposed development would have been lawful at the date of the application.

5. 46 Middle Way is a mid-terraced two storey house. At the rear, at right angles to the main roof of the house, it has an original two storey outrigger projection with a mono-pitch roof. The ridge of that mono-pitch roof intersects the rear slope of the main rear roof at approximately its mid-height, while the eaves are lower than that of the main roof and connect with the rear wall of the house.

6. The proposed development comprises a rear dormer spanning the width of the main roof, and joined to a second dormer above the roof of the outrigger in an L-shape.

7. I am required to determine the appeal on the basis of the application plans and details that were submitted to the Council. Since the height of the development to the main roof slope would marginally overshoot the ridge height of the existing roof, it thereby exceeds the limitation at Class B.1(b) and so the proposed development cannot be PD and the appeal fails simply on that basis.

8. However, given that the appellant could easily overcome that difficulty by submitting a revised scheme of slightly lower height, I consider it is in both parties' interest that I deal with the principal point of dispute between them, which would otherwise remain unresolved. That is whether the conditions in paragraph B.2.(b)(i) and (ii) are applicable, and if so whether they are met.

9. Condition B.2.(b)(i) and(ii) state:

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 less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.

(ii) 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;

10. The meaning of paragraph B.2.(b)(i) is that the conditions which follow it at (aa) and (bb) are applicable, and both must be complied with, in all cases where there would **not** be a hip to gable enlargement, or where there would **not** be an enlargement which joins the original roof to the roof of a rear or side extension.

11. Similarly, for B.2.(b)(ii), in all cases where there would **not** be an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement can extend beyond the outside face of any external wall of the original dwellinghouse.

12. The proposed dormer to the main rear roof slope would be joined to the walls of the proposed second dormer above the outrigger, rather than joining the original roof to the roof of an extension. Hence, it would not join the two roofs. And clearly the proposal is not a hip to gable enlargement. Therefore, the proposed development is not one of the exceptions listed in paragraph B.2.(b)(i) and (ii) and hence conditions (aa) and (bb) apply.

13. Taking (bb) first, the submitted drawings show that there would be a 0.2m gap between the dormers and the outer edge of the eaves of the roofs. In order to avoid creating a gap with two separate extensions there would be no 0.2m setback at the point of intersection. Such a gap in this case would be highly impractical, and avoiding such a scenario is consistent with the example given in the Government's Technical Guidance[1] where it would not be practical to require a setback.

[1] Permitted Development for Householders, Technical Guidance (April 2017).

14. However, the Technical Guidance does not override the need within the GPDO itself for compliance with condition (aa). Therefore, even if the proposal complies with condition (bb), it cannot be PD because it fails to satisfy the requirements of condition (aa).

15. Notwithstanding the above, the lower part of the blank wall (facing No. 44) of the second dormer, where it is below the line of the eaves of the main rear roof, would join the rear elevation wall of the dwelling house. That lower part of the second dormer would extend rearwards from the outside face of the rear external wall of the original dwellinghouse and thus the requirement at B.2(b)(ii) is not met.

16. The appellant refers to an appeal decision[2] in 2015 and a Council decision at Kingwood Road in 2012. However those decisions were made in the context of the older and now replaced 1995 version of the GPDO, in which the conditions of Class B were significantly different. A further decision referred to, at Ermine Road, was made in the context of the current 2015 GPDO, but it predates the 2016 and 2017 Technical Guidance on Class B development. Given that these examples are now relatively out of date they do not lead me to reach a different conclusion. Moreover, I can only decide this appeal by applying the GPDO to the particular circumstances of this case.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the formation of habitable rooms in roof space with rear dormers was well-founded, and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

[2] Unreferenced