
Appeal Decision

Site visit made on 26 June 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 7 July 2017

Appeal Ref: APP/L5810/X/17/3167000
29 Cole Park Road, Twickenham, TW1 1HP

- 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 Mr and Mrs Grewal against the decision of the Council of the London Borough of Richmond Upon Thames.
- The application Ref 16/2272/PS192, dated 8 June 2016, was refused by notice dated 8 November 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 of lawful use or development is sought is a proposed loft conversion.

Summary of Decision: The appeal is dismissed.

Procedural matter

1. The Appellants describe the proposal as stated above, that is, a proposed loft conversion whereas in the notice of refusal the Council describe the proposal as 'alterations and enlargement of existing rear dormer roof extension'. I will take both of these descriptions into account in my determination of the appeal.

Main Issue

2. The main issue in this appeal is whether the proposed development would have been lawful at the date on which the application was made, that is, on 8 June 2016. In an appeal such as this the planning merits of the proposed development do not fall to be considered.

Reasons

3. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land¹. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
4. Schedule 2, Part 1, Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to a number of

¹ S.57 of the 1990 Act

specified limitations, tolerances and conditions. And Schedule 2, Part 1, Class C permits any other alteration to the roof of a dwellinghouse, again subject to specified limitations, tolerances and conditions.

5. The Council's reasons for refusal merely state that the proposal does not meet the criteria laid down in the GPDO whereas the Appellants say that the proposal is within Classes B and C.
6. In addition to the LDC application the Appellants made two applications to extend their property; these applications were allowed on appeal on 3 March 2017². However, I have to determine whether the proposal in the LDC application would have been lawful on the date of the application, that is, 8 June 2016. The general principle that has been established by the Court is that permitted development rights are not available until a dwellinghouse has been substantially completed even if the development would have been permitted development if it had been carried out to the completed dwelling³.
7. At the date of the application the proposal could not have been lawful (or indeed possible in practice) because the alterations and enlargement of the existing rear dormer roof extension (or as described by the Appellants, the loft conversion) are dependent on the construction of the applied for extensions. The proposal is therefore not permitted development.
8. With regard to the dimensions of the proposed loft conversion I note the Council's opinion that the proposed loft conversion would not comply with B.1(d) in that the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres⁴. The Appellants have provided dimensions of the proposal in square metres (areas) only and note that the current dormer is 50 cubic metres⁵. It is therefore not possible for me to ascertain with any certainty what the cubic content of the proposal would be. But given my finding above there is no necessity for me to make any finding in respect of the cubic content of the proposal.

Conclusions

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed loft conversion 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.

Decision

10. The appeal is dismissed.

Gloria McFarlane

Inspector

² APP/L5810/D/17/3166990 and 3166995 – I noted on my visit that no work had commenced in respect of the permitted extensions

³ *R (Oao Townsley) v SSCLG* [2009] EWHC 3522

⁴ The Officer's Report

⁵ Drawings Nos PLL-005 and PLL-009