



Appeal Decision

No site visit

by Simon N Hand MA

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

Decision date: 24 August 2017

Appeal Ref: APP/M5450/X/17/3173114
5 Prestwood Avenue, Harrow, HA3 8JZ

- 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 & Mrs K Stevens against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0200/17, dated 16 January 2017, was refused by notice dated 21 March 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 rear dormer with Juliette balcony and insertion of 3 rooflights on front roof slope.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

3. Whether the proposal falls within the limits of Class B of Part 1 Schedule 2 of the General Permitted Development (England) Order 2015 or not.

Reasons

4. I have used the description from the refusal document and appeal form as it better described the proposal.
5. No 5 is part of a terrace of two storey houses and the proposal is to add a third storey by creating a full width rear dormer. The houses are slightly stepped so that uphill neighbour is slightly higher but the downhill neighbour is on the same level. The proposal would utilise the party wall between the appeal property and the downhill neighbour, raising it to form the flank elevation of the dormer on that side. The Council refused to issue a certificate as such a proposal contravened B.2(b)(ii) which states 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". Since then a separate LDC application has been granted for a similar development that does not utilise the party wall.

6. The reasoning in the Officer's report is that the proposed dormer would be built on the neighbouring property and so extends beyond the external wall of the original dwellinghouse. I am unable to follow the logic of this reasoning as the party wall, which is being extended upwards, is not an "external wall of the original dwellinghouse", by definition a party wall in a terraced house must be an internal wall, separating the two dwellings. No alternative definition or explanation has been offered by the Council so I cannot see how B.2(b)(ii) is relevant to this case. When the appellant's agent queried the decision the Council they replied that they didn't think the legislation was meant to allow dormers to be built onto a neighbour's property, but they did not explain why.
7. The appellant provides a number of appeal decisions dealing with party walls which deal with a separate argument that because the dormer would use the party wall, it would encroach into the curtilage of the neighbouring property and so would fall outside the provisions of Part 1 altogether as this Part deals only with "*development within the curtilage of a dwellinghouse*". The appeal decisions show that it is generally understood that in the case of party walls the curtilages of neighbouring dwellings overlap and so Part 1, and in particular, Class B is still relevant. However, this does not seem to be the argument being relied on by the Council, presumably because they are aware it would not advance their case.
8. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed dormer which includes an extension to the party wall with the neighbour 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.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 16 January 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: They do not contravene any limitations set out within the General Permitted Development (England) Order 2015

Signed

Simon Hand

Inspector

Date: 24 August 2017

Reference: APP/M5450/X/17/3173114

First Schedule

Rear dormer with Juliette balcony and insertion of 3 rooflights on front roof slope.

Second Schedule

Land at 5 Prestwood Avenue, Harrow, HA3 8JZ

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.