

Appeal Decision

Unaccompanied site visit made on 10 August 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 06 September 2017

Appeal Ref: APP/N5090/X/17/3167596
17 Durham Road, London N2 9DP

- 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 Jonathan Peters against the decision of the Council of the London Borough of Barnet.
 - The application ref. 16/5883/192, dated 8 September 2016, was refused by notice dated 11 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 is sought is described at section 8 of the application form as "*Proposed roof extension and amendments to and installation of additional rooflights.*"
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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 the appeal form as "*Roof extension over existing rear extension. 1 no. rooflight to front and 1 no. rooflight to rear to facilitate loft conversion.*" I have proceeded on that basis and taken into account the amended plans the Council received before the refusal notice was issued.
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Main issue

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

Reasons

7. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
8. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO").
9. No. 17 Durham Road is a 2-storey, semi-detached house with further accommodation in the roof space. As I saw when standing on Twyford Avenue, 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 wall just under the eaves. From what I have seen and read, the outrigger appears to have formed part of the building's original construction.
10. The proposal is to build a roof extension over the outrigger with the roof enlargement joining onto and utilising some space within the main rear-facing roof of the property. The roof extension would provide a new bedroom. The scheme would also rely on the insertion of 2 new rooflights.
11. The Council's decision notice said that the development is not permitted under Schedule 2, Part 1, Class B of the GPDO. More specifically, when reading the Council's delegated report and appeal statement, and all of the appellant's written representations, it is clear that the dispute between the parties turns on whether the roof extension would comply with Condition B.2 (b) of Class B. I have been given no reason to believe that the 2 rooflights would not comprise other alterations to the roof of the house falling within and complying with Class C. Thus, I make no further assessment of that element of the proposal.
12. Condition B.2 (b) reads as follows:

"(b) 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; and*
 - (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;"*

13. The proposed roof extension will only comply with B.2 (b) (i) and B.2 (b) (ii) if it is treated as "an enlargement which joins the original roof to the roof of a rear or side extension." This is because about half the eaves of the original main rear roof will be lost and because the enlargement will extend beyond the outside face of part of the external rear wall of the original dwellinghouse.
14. The Government's Technical Guidance *Permitted development rights for householders*, which gives guidance on the operation of the GPDO and was last updated in April 2017, states 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."
15. The Technical Guidance is a material consideration of some importance. In my view, the extract above adopts a purposive approach to the interpretation of Condition B.2 (b), as opposed to an unduly literal approach. For instance, it encourages a reader to consider an original outrigger and an existing rear extension in the same way. Presumably, it was prepared to acknowledge the fact that a sizeable proportion of existing back wings or outriggers are part of a property's original construction, with many being constructed in pairs. Moreover, because by definition they tend to be subsidiary features, many reasonable observers would be likely to consider rear outriggers as extensions, even though they may have been built with the rest of the original property. Indeed, the Council's own description of the proposal refers to an "existing rear extension".
16. Where the Technical Guidance clearly covers the issue at hand it should be followed unless it has either been overturned by the Courts or it can be clearly demonstrated that it does not apply to the particular facts of the case. Neither of those matters arises here. The Technical Guidance offers a great deal of flexibility to roof constructions. What is being proposed here seems to fit in with the relevance guidance reasonably well. The scheme entails, in effect, a dormer addition spread across and linking 2 upper rear pitched roof planes of the original house that differ in terms of their shape and the level of their pitch. According to the Technical Guidance, Condition B.2 (b) should be interpreted as allowing a roof extension which extends from the main rear roof of No. 17 Durham Road onto the side roof of the original rear outrigger across the line of the original rear eaves, just as proposed.
17. I agree with the appellant that a particular purpose of the relevant legislation is to prevent roof extensions overhanging the edge of a roof, rather than to preclude roof extensions which link 2 roofs of a house together. The appellant has illustrated this approach in Document 5 of the appeal statement. The Council's approach would appear to suggest that the proposed roof extension would be permitted development if the rear outrigger was non-original, even though the overall visual appearance and end result would be the same as now proposed.
18. Generally, the GPDO allows householders some latitude in how they extend their houses with the conditions and limitations being imposed to control impact and to protect local amenity. With this in mind, I note that the Council

allowed a subsequent application for a lawful development certificate (ref. 17/0062/192) for a roof extension over the outrigger at the appeal property which would stop short of the eaves of the main roof by about 200 mm, thereby not joining onto the main roof. However, this would simply leave an awkward gap between the roof extension and the eaves of the main roof and result in a need to introduce a new staircase to access the proposed bedroom. The main rear eaves would remain in full, but the section behind the roof extension would be effectively hidden in any public or private views by that extension. This approach does not obviously protect local amenity and it hinders the householder's reasonable expectations at the same time.

19. The appellant has submitted a number of decision notices and plans relating to similar proposals in several other London boroughs, all of which were considered to be lawful. The Council has chosen not to comment on these examples. Rather, the Council has submitted an appeal decision (ref. APP/N5090/X/16/3160315) relating to a site (97 Lichfield Grove) in its own borough which is said to follow the Council's approach.
20. I have studied this appeal decision but detailed and firm comparisons are difficult to make as I have not been provided with any plans. Nonetheless, it would appear that the circumstances are not identical to the appeal scheme before me. First of all, the Inspector found that the roughly cubic structure (bathroom) proposed over the flat-roofed, rear-projecting wing would amount to a new storey falling within Class A and would fail to meet one of the limitations in Class A. In terms of Class B, the relevant Technical Guidance could not be applied to the proposal because it could not stretch to a proposal for a dormer (in the main rear roof) linked to an extra floor or storey (the cubic structure over the rear outrigger).
21. I realise that in other commentary in the appeal decision the Inspector, attaching less weight to the Technical Guidance than I do, believed that the rear-projecting wing could not be considered as an extension as it was part of the original dwelling. I have already explained why I favour the purposive approach to the interpretation of the GPDO adopted by the Technical Guidance. One absurd outcome of not adopting such an approach is that a householder could only consider taking advantage of the relevant GPDO provision by first taking down an original 2-storey outrigger and replacing it with something similar to have it reclassified as an extension.
22. 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. 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