
Appeal Decision

Site visit made on 10 April 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2018

Appeal Ref: APP/G3110/X/17/3179870
16 Stockmore Street, Oxford OX4 1JT

- 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 Mark Preston against the decision of Oxford City Council.
 - The application Ref 17/00944/CPU, dated 12 April 2017, was refused by notice dated 08 June 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 described on the application form as: the alteration of an existing roof to form additional accommodation in the form of a dormer roof extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant and I share the same surname. For the avoidance of doubt I make clear that we are not related to, or known to, each other.
3. I visited the site on 10 April 2018. That visit was scheduled as an accompanied visit whereby a representative of both parties should have been present. However, the Council did not arrive. After making unsuccessful attempts to contact the relevant officers at the Council, via the Planning Inspectorate case officer, I determined that the best course of action was to continue with the visit on the understanding that I would not be in a position to discuss the proposal or its merits with the appellant and his agent. They were happy to let me view the proposal from within the property and from the rear garden on that basis.

Main Issue

4. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
5. The main issue is whether the Council's decision to refuse to grant a LDC was well founded

Reasons

6. As set out in the banner heading above, the proposal was described in the application form as *'the alteration of an existing roof to form additional accommodation in the form of a dormer roof extension'*. In the appellant's view, the proposal would constitute 'permitted development' having regard to the terms of Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Class B identifies that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof will be permitted, providing that the development would meet the conditions set out at paragraphs B.1 to B.4.
7. The Council, on the other hand considers that the proposal would not fall squarely into the definition of an addition or alteration to the roof of the property but that it would amount to an extension to the dwellinghouse which should be considered under Class A of Part 1 of Schedule 2 of the GPDO. Under Class A the enlargement, improvement or other alteration of a dwellinghouse is permitted development subject to the conditions listed at paragraphs A.1 to A.4.
8. More specifically, the Council allege that the development would contravene the limitations set out at paragraphs A.1(d) and A.1 (i). A.1(d) states that development is not permitted by Class A if, *'the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse'* and, under paragraph A.1(i), development is not permitted if, *'the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres'*.
9. If the development was considered to fall within the terms of Class A there is no dispute that it would fail to meet the limitations of those two paragraphs, such that it would not amount to permitted development and, hence, would not have been lawful at the point the application was made.
10. The Council does not suggest that the proposal would contravene any of the limitations in paragraphs B.1 to B.4 and in the absence of anything to suggest otherwise, I have no reason to take a different view. In other words, if I were to conclude that the development would fall squarely within the terms of Class B it would have amounted to 'permitted development' and would have been lawful on the date the application was made.
11. In view of the above, my decision rests on the question of whether the development would amount to the 'enlargement of a dwellinghouse consisting of an alteration or addition to its roof' or whether it amounts to an extension of the dwellinghouse falling outside the scope of that definition.
12. The property in question is a two-storey terraced house with a two storey 'outrigger' at the rear. That outrigger is attached to a similar rear projection on the neighbouring property and the structures may well form part of the original design of the dwellings. As is often the case, the outrigger contains a kitchen and bathroom at ground floor level and a small bedroom or 'box room' at first floor level. The ridgeline of the pitched roof of the outrigger terminates just below the eaves line of the roof of the main house. The eaves are set well below the eaves of the main body of the house, being approximately aligned

with the mid-section of the rear facing first floor bedroom window. An existing 'box dormer' is located on the rear facing roof of the dwelling.

13. The proposed addition would connect to that dormer by extending upwards from the roof of the outrigger. The flat roof of the new addition would terminate slightly below the flat roof of the existing dormer. In terms of the footprint, the addition would be set back marginally from the rear wall of the outrigger and, similarly, would be set in from the eaves to a limited extent. In other words, the footprint would be contained within the area covered by the existing roof.
14. I have noted the content of the Government's Technical Guidance – Permitted Development Rights for Householders (April 2017) (the Technical Guidance) which, in relation to L-shaped dormers, 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.¹
15. However, I am mindful that guidance represents advice on interpretation and not statute and, regardless of that point, I am not satisfied that the guidance provides a conclusive answer in relation to cases such as this. In particular the question of what the guidance means when it states that two such roofs may be joined whether 'the shape or level of the pitch of the roofs are different in relation to each other' is unclear in my view. Is the 'level of the pitch' intended to refer to the degree or severity of the slope of the roof or is it intended to refer to 'level' with regards to the overall height of the respective roofs?
16. For example, one could have a situation where a rear outrigger has an eaves level that matches that of the main roof but the pitch of the roof of the outrigger is shallower, such that it terminates below the ridge of the main dwelling. In other words, the 'level' of the pitch of the two roofs would be different in relation to each other but that need not discount those roofs being joined together under the terms of Part B. It appears to me that is the kind of scenario that may be envisaged in the guidance. I do not take the guidance to mean that roofs may be joined irrespective of the height of the respective roofs in relation to one another.
17. In an extreme example, if a two-storey terraced property had a single storey outrigger and the proposal was to extend above the roofspace of that outrigger to connect or 'join' onto the main roof, a significant upward extension would be required. To my mind, that would undoubtedly represent both an extension to the dwelling and an alteration to the roof. It would not simply be a case of joining two roofs of different levels together, even though the footprint of the extension would project above the roof of the outrigger.
18. Whilst not as extreme as that example, the height of the roof of the outrigger in this case is below the roof of the main dwelling. The eaves line is roughly half way up the first floor bedroom window and set well below the level of the main roof. It is not just a case where the 'level of the pitches' is different; the entire outrigger is set below the level of the main roof. In order to join the

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outrigger to the extended roof of the main property it would be necessary to increase its height quite substantially. That increase in height can be seen on the proposed drawings which depict that the structure would need to extend upwards before it reached the existing floor level of the converted roof space.

19. Accordingly, as a matter of fact and degree, it is not a case of simply joining two roofs together and the proposal would amount to more than just an addition to the property's roof. It would involve an appreciable enlargement of the house and the creation of an additional storey above the existing two storey outrigger. In other words, it would be something of a hybrid that should be considered against the provisions of Class A and Class B.
20. My opinion on that is reinforced by the content of the introductory paragraphs² of the Technical Guidance which state which state that:

In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. It is therefore essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights and therefore does not require an application for planning permission.

For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B.

21. In other words a single extension or alteration can fall within more than one Class. Accordingly, for the purposes of applying Part 1, the scheme needs to be considered in the light of Class A as well as Class B. For the reasons given above, the proposal would fail to comply with the requirements of paragraphs A.1(d) and A.1(i) relating to Class A and would not amount to permitted development. Thus, it would not benefit from planning permission granted through the GPDO and, in the absence of planning permission, the proposed development would not be lawful.
22. I have had regard to the previous appeal decisions referred to by both parties. Based on the descriptions within the appeal decisions, some of those decisions appear to be similar to the one before me, particularly that at 35 Tubbs Road, London. However, I have not been provided with full plans relating to those schemes and I cannot be certain of the arguments that were placed before the respective Inspectors or how those arguments influenced the eventual decisions. Given the way in which guidance on the matter is open to interpretation it does not surprise me that different decisions may have been made on seemingly similar schemes. The question of whether an alteration falls within Class A or Class B, or both, will be finely balanced based on the specific circumstances of any given case.
23. Based upon the information before me in the present case, I am satisfied that the Council's decision to refuse to grant a certificate of lawful development in

² At pages 8 and 9

respect of the proposal 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.

Chris Preston

INSPECTOR