
Appeal Decision

Site visit made on 29 July 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref: APP/Z0116/X/19/3224576

123 Lake Road, Southmead, Bristol BS10 5JG

- 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 Ms Hayley Hemming against the decision of Bristol City Council.
 - The application Ref 19/00427/CP, dated 28 January 2019, was refused by notice dated 21 March 2019.
 - 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 two-storey extension to the rear with additional dormer extension to extension roof.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse the application for a certificate of lawful use or development was well-founded.

Procedural matter

3. The Council claims that an accurate assessment of the proposal cannot be made because the "existing" plans do not show the roof extension which was said to be substantially complete at the time that the application was made. However, the roof extension is shown on the "proposed" drawings and I am satisfied that there is sufficient information about that extension. I also noted a number of inaccuracies in the appeal plans, such as the size and position of windows and the siting of the garage to be demolished. However, these do not affect the considerations in the appeal. I comment below about other aspects of the plans which are more relevant to this determination.

Reasons

4. Section 57 of the Act provides that planning permission is required for the carrying out of any development of land. Section 55 of the Act defines development as including the carrying out of building, engineering, mining or other operations in, on, over or under land, whilst Section 55(1A) says that for the purposes of this Act "building operations" includes—
 - (a) demolition of buildings;

- (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
5. I consider that the proposed operations amount to a building operation. This is not in dispute. Deemed planning permission for certain classes of development is granted under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Class A of Schedule 2 to that Order permits the enlargement, improvement or other alteration of a dwellinghouse. Paragraph A.1 sets out the circumstances in which development is not permitted. The Council does not contend that the proposal would fall within any of the circumstances where development is not permitted, and subject to the one proviso, to which I refer below, I agree.
6. Paragraph A.1(k)(iv) provides that development under this Class is not permitted if it would consist of or include an alteration to any part of the roof of the dwellinghouse (amongst other things).
7. The extension would join onto, and thus alter, the roof of the dwellinghouse. However, as the *Permitted development rights for householders: technical guidance* (the Technical Guidance) makes clear, that part of the development may be permitted under Class B or C of the Order, and I shall deal with that below.
8. Accordingly, subject to this reservation, the proposal would fall within the classes of development permitted by Class A. However, there are also a number of conditions which development permitted under this class must meet. Paragraph A.3 is relevant and states:
- Development is permitted by Class A subject to the following conditions—*
- (a) *the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;*
 - (b) *any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—*
 - (i) *obscure-glazed, and*
 - (ii) *non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and*
 - (c) *where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.*
9. The plans are silent about the precise appearance of the dormer and whilst the plans indicate materials to be used, it is not clear whether these apply to the dormer as well as the extension. The rearmost (end) elevation is shown wholly as blue coloured panels, coloured in the same way as windows elsewhere in the dwelling. The plan view gives details of fenestration at first floor level, but the

mezzanine dormer bedroom is devoid of detail, and does not show any fenestration. Accordingly, I cannot be certain what the materials would be. Even taking into account that the roof of the dormer may not need to match existing materials, as it cannot be readily seen, the plans do not show sufficient detail to ensure that condition (a) can be satisfied.

10. It is unclear from the submitted plans whether any windows would be inserted in the side elevation of the dormer; the plan view does not show any windows in the upper floor and the elevational view is silent about the treatment of the side elevation of the dormer. Thus I cannot be certain that condition (b) would be satisfied.
11. The Council says that condition (c) is not complied with. This requires that the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse. I take the meaning of "pitch" to mean the angle of inclination of the roof. The roof of the extension in this case would be a monopitch roof, meeting the extended original roof at a right-angle to it. The roof pitch of the extension is shown as being at the same angle as that of the original roof. There is nothing in the Order which says anything about orientation. My view on this is backed up by the Technical Guidance; whilst (at page 33) it illustrates an extension with a roof pitch parallel to that of the main roof, there is nothing which precludes a roof pitch on an extension which is the same pitch as that as the main roof but at right-angles to it.
12. Accordingly, whilst I am satisfied that condition (c) would be met, I cannot be satisfied that the conditions (a) and (b) referred to above would be satisfied, and so the proposal would not be permitted under Class A.
13. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The development would not fall in any of the categories of development which are not permitted under this Class. There are also conditions to this Class which must be complied with. One of these (a) requires the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. My findings in respect of the similar condition of Class A are also applicable here.
14. The Council alleges a failure to comply with condition (b)(i)(bb) which states:

(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—

..... (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;
15. However, the provisions of sub-paragraph (bb) do not apply in this case (by virtue of paragraph (i)) because the proposal involves an enlargement which joins the original to the roof of a rear extension.
16. Condition (c) states that:

(c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be—

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

17. My findings in respect of windows in the dormer referred to in paragraph 10 above, also apply here. I therefore find I cannot be satisfied that the proposal falls within Class B.
18. Class C also allows for other alterations of a roof, but the proposal would fall within sub-paragraph (b) of the classes of development not permitted, where the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof.
19. In an application under Section 192 of the Act the onus is on the applicant to ensure that sufficient information about the proposed development is provided to enable the decision-maker to be certain about its precise nature. Here, I find that the plans are too vague and lacking sufficient detail to allow me to be confident that the proposal is one that would satisfy the conditions of paragraph B.1 of Class B and thus be permitted under the Order.

Conclusion

20. Accordingly, I find that the Council's decision to refuse to issue a certificate of lawfulness for the proposal was well-founded. For the reasons given above, I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR