



Appeal Decision

Site visit made on 22 August 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 28 October 2019

Appeal Ref: APP/T5720/X/18/3216178 43 The Drive, Morden SM4 6DH

- 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 Rosanna Toriello against the decision of the Council of the London Borough of Merton.
 - The application Ref 18/P2799, dated 10 July 2018, was refused by notice dated 4 September 2018.
 - 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 as '*A loft conversion comprising a hip to gable and a dormer to the rear roof slope with 2 x velux rooflights over the front roof slope. The rear elevation is to contain 2 x PVCu casement windows. The side elevation is to contain 1 x PVCu casement window obscure glaze and fix shut up to 1.7m.*'
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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 development which is considered to be lawful.

Application for costs

2. An application for costs was made by Ms Rosanna Toriello against the Council of the London Borough of Merton. This application is the subject of a separate decision.

Preliminary Matters

3. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 10 July 2018. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as "the GPDO".
4. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
5. When visiting the site I noted that the development the subject of the application made had already been carried out.

Main Issue

6. Article 3, Schedule 2, Part 1, Class B of the GPDO grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. In particular, this restricts the cubic content of the roof space resulting from the enlargement to 40 cubic metres in the case of a terrace house, or 50 cubic metres in any other case. In this instance both the main parties agree that the two elements, a dormer roof extension to the rear roof slope and a hip to gable alteration, would involve a total volume increase of approximately 46 cubic metres.
7. The main issue in this appeal is whether the development would conflict with Part 1, B.1(d) and, on this basis, whether the Council's decision to refuse the LDC was well founded.

Reasons

8. The point in dispute is whether the dwelling, which the Council accepts was built as a semi-detached property, due to it having subsequently been extended to the side, can now be seen to constitute a terraced dwelling. The Council considers this is now the case and determined the application, accordingly. The appellant argues otherwise.
9. No 43, the appeal dwelling, was originally twinned with No 45. It can be seen on its opposite side, that the space between Nos 43 and 41 has since been infilled by single-storey extensions to both properties. At my site visit I noted that a single width side garage attached to No 41 adjoins a side extension to the appeal dwelling. In effect, the three dwellings are now physically connected.
10. The GPDO provides that, for the interpretation of Part 1 of Schedule 2, a terraced house means a dwellinghouse situated in a row of three or more dwellinghouses used or designed for such use as single dwellings where it shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side.
11. The Council, in support of its case cites a previous appeal decision (*APP/N5090/X/08/2088472*) which concerned also whether two linked dwellings could be considered as terraced properties. In this case a two storey block, built as part of the original dwellings, linked their rear half, and the Inspector considered that the shared wall was a party wall, and of a size substantial enough to prevent it being regarded as a trivial or insignificant feature.
12. This contrasts significantly with the physical situation involving the current appeal. Here, the side garage at No 41 stops considerably short of the host dwelling's rear wall. The adjoining side extension to the appeal dwelling continues rearwards to form a wraparound structure and this arrangement means that the two houses are only partially connected and only at ground floor level. The length of party wall divide is significantly restricted. Accordingly, I find there is little direct parallel that can be drawn between the two cases.
13. When viewed from the street, despite the alterations made, Nos 43 and 45 still retain their semi-detached relationship. However, in contrast, the single storey link between Nos 41 and 43 does not have the same visual impact. This is

reinforced by the fact that the garage is not integral to No 41, has no front windows and is not used for primary residential or habitable purposes. Any terracing effect is thereby decidedly limited.

14. Another appeal decision referred to by the Council (*APP/M5450/X/09/2118612*) concerned primarily whether the appeal property was a detached building, and I consider the particular circumstances of little relevance to the appeal in hand.

Conclusion

15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC in respect of a dormer extension and associated roof alterations at 43 The Drive, Morden SM4 6DH was not well founded, and that the appeal should succeed. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/T5720/X/18/3216178

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS HEREBY CERTIFIED that on 10 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations which involve alterations to the roof comprising a hip to gable, a rear dormer extension and two front rooflights constitute permitted development within the terms of Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Timothy C King

INSPECTOR

Date: 28 October 2019

First Schedule

Alterations to the roof comprising a hip to gable, a rear dormer extension and two front rooflights, as shown on drawings P2018-06-1743-02 Rev A, P2018-06-1743-03 Rev A, P2018-06-1743-04 Rev A, P2018-06-1743-05 Rev A and site location plan (submitted with application ref. 18/P2799 , dated 10 July 2018.

Second Schedule

Land at 43 The Drive, Morden SM4 6DH

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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.

Plan

This is the plan attached to the Lawful Development Certificate dated: 28 October 2019

by Timothy C King BA (Hons) MRTPI

Land at 43 The Drive, Morden SM4 6DH

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Scale: Do not scale

