



Appeal Decision

Site visit made on 27 October 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 20 November 2019

Appeal Ref: APP/N2345/X/19/3233531

11 Raleigh Road, Fulwood, Preston PR2 9RU

- 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 Faisal Member against the decision of Preston City Council.
 - The application Ref 06/2019/0540, dated 10 May 2019, was refused by notice dated 2 July 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 development (LDC) is sought is: hip to gable roof enlargement and rear dormer.
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Decision

1. The appeal is dismissed. See formal decision below

Background information

2. The appeal building is a two-storey, semi-detached house, dating back to around the late 1930s/early 1940s. It is constructed of red brick and render with a grey slate roof. Since it was built it has been extended at the rear by means of a full-width, single storey extension with a pitched tiled roof. During my site visit I noted that other houses in the immediate vicinity were also mainly of two storeys and of similar age and design, with a mix of hipped and dual-pitched roofs. Some had been extended to the rear. However, others looked as though they had retained their original plan form without any rear additions.

3. The application sought a LDC under the Town and Country Planning (General Permitted Development (England) Order 2015 (GPDO), Schedule 2, Part 1, Class B in relation to additions to the roof. The addition proposed is a hip to gable roof and a rear dormer enlargement. The plans submitted were a Location Plan (No BB236-000); Existing Plans and Elevations (No BB236-001) and Proposed Plans and Elevations (No BB236-100-B). It is contended that the proposal accords with Class B and therefore constitutes permitted development (PD) under the GPDO.

4. The Council refused the LDC application on the basis that the proposal did not comply with provision B.1(d)(ii) of the GPDO. This states that Development is not permitted by Class B if '(d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case. Because the house is semi-detached the 50 Cubic metre figure applies. There is no dispute that the proposal complies with the other criteria and conditions of Class B.

5. There is also no dispute that the increase in roof space resulting from the hip to gable roof enlargement and rear dormer, in themselves, would be less than the 50

cubic metres stipulated in the GPDO. However, having regard to the Department for Communities and Local Government PD rights for Householders – Technical Guidance (CLGTG), the Council included the volume of the roof to the rear extension. This meant that the cumulative increase in roof space, resulting from the proposal and the extension, exceeded 50 cubic metres. It was on this basis that the LDC application was refused.

6. On behalf of the appellant it is argued that the Council should not have included the roof space of the extension in its calculation. Class B is referred to and it is contended that the wording refers to an *'addition or alteration to its roof'*. It is argued that 'Class B is, therefore, *'implicit to the main roof of the house only'* and that the words *'original roof space'* should be read in conjunction with the overarching PD allowance that relates to the main roof of the dwelling. In re-calculating the volumes, it is confirmed that the existing volume of the roof is 51.68 cubic metres and the proposed extension is 43.3 cubic metres .

The main issue

7. From the above, it is clear that the main issue is whether or not the volume of the roof to the rear extension should have been included in the calculations, in assessing whether or not the proposal was lawful for planning purposes at the time of the LDC application.

Reasons

8. An appeal relating to a LDC application is confined to the narrow remit of reviewing the LPA's decision and Section 195(2) of the Act requires an assessment to be made, as to whether the refusal of the application is or is not well founded. The assessment must be based on whether or not the proposed development, for which the certificate is sought, was considered to be lawful at the time of the application (10 May 2019). The planning merits of the proposed development are not relevant and there is no planning application before me. What needs to be assessed in this case is whether or not the proposal would have been lawful for planning purposes on the date of the application.

9. The relevant section of the GPDO - B.(d)(ii) is set out above in paragraph 4. For the purposes of Class B *'resulting roof space'* means the roof space as enlarged, taking into account any enlargement to the original roof space (my underlining), whether permitted by this class or not. Clearly the rear extension was granted approval separately. It is also the case that the rear extension did not form part of the original house.

10. In the interpretation section the word *'original'* is stated to mean – (a) *in relation to a building, other than a building which is Crown land, existing on 1 July 1948, as existing on that date;* (b) *in relation to a building, other than a building which is Crown land , built on or after 1st July 1948, as so built...*

11. The CLGTG states that *'To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. (my underlining).* It also states that *'Terrace house' has the meaning set out in the 'General issues' section of this document. 'Original roof space' will be that roof space in the 'original building'. As indicated above 'Original' – means a building as it existed in 1948 if built before that date or as it was built if after that date.*

12. From the above, the first question is what constituted the original dwelling and, therefore, is to establish what was the original roof space to the house at that time. It is evident that, when first built the original roof space would have been just the roof space to the main roof. The extension was clearly added much later and cannot, therefore, be said to have formed part of the '*original*' building.

13. The second question is to establish if the extension works enlarged the '*original*' roof space to the house. In my view the CLGTG suggests that it did. This is because the guidance refers to '*any previous enlargement in any part of the house*' (again my underlining).

14. In assessing the roof space to the house I consider that, prior to the extension being built, it would have simply been the roof space over the main part of the house. The current roof space comprises the '*original*' space within the main roof, plus the added roof space over the rear extension. Thus, for the purposes of Class B, I consider that the '*resulting roof space*' in this case must mean the main roof space, as proposed to be enlarged, plus the roof space of the extension which, in itself, was an increase to the original roof space since the house was built.

15. I conclude, therefore, that the roof space of the extension should be included in the calculation of the resulting roof space for the purposes of B.1(d)(ii). It follows that the proposal cannot be PD since the volume of the proposed enlargement of the roof space, combined with the roof space as already enlarged by the rear extension, exceeds 50 cubic metres. I consider, therefore, that the Council's decision not to grant a Lawful Development Certificate was sound and that the appeal cannot, therefore succeed.

Formal Decision

16. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector