



Appeal Decision

Site visit made on 29 November 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2019

Appeal Ref: APP/M5450/X/19/3224513

71 High Worple, Harrow HA2 9SX

- 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 Mohammad Maomenfam against the decision of the Council of the London Borough of Harrow.
 - The application ref. P/5418/18, dated 7 December 2018, was refused by notice dated 1 February 2019.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 4 of the application form as "*Proposed Hip to gable Loft Conversion - Rear Dormer and three Velux Windows to the front slope.*"
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Decision

1. The appeal is dismissed.

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 probabilities.
5. Section E of the appeal form records that the application for a certificate was made under section 191 of the 1990 Act as amended but in actual fact the application was for proposed operations within the meaning of section 192, as clearly stated in the heading of the relevant application form and the Council's decision notice.

Main issue

6. 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 or not the proposed development would have amounted to permitted development at the time of the application. At that time permitted development rights were contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO").
8. Article 3(1) and Class B of Part 1 of Schedule 2 to the GPDO permit the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to the limitations set out in paragraph B.1. One of those limitations at paragraph B.1 (c) states that development is not permitted by Class B if "*any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway*". The Council determined that the operations proposed at roof level would be contrary to this limitation.
9. The document published by the Government titled "*Permitted development rights for householders Technical Guidance*" (hereinafter "TG") and last updated in September 2019 assists with the interpretation of the GPDO. The TG says on pages 33-34, with regard to paragraph B.1 (c), that "*The principal elevation could include more than one roof slope facing in the same direction. For example, where there are large bay windows on the front elevation, or where there is an 'L' shaped frontage. In such cases, all such roof slopes will form the principal elevation and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes...*".
10. No. 71 is a two-storey, semi-detached house with hipped roofs, including over the two-storey side extension which is set back at first floor level. The principal elevation of the house is plainly the front of the house. This elevation fronts High Worple, the highway serving the house and various other semi-detached houses hereabouts. It also contains a gabled first floor front projecting bay (shared with no. 69), a wide ground floor window and the main entrance to the house.
11. It is clear that the wall plane across the principal elevation is staggered and that the house has two existing hipped roof slopes forming part of that elevation, both of which face in the same direction towards High Worple and reflect that staggered built form. The forwardmost roof slope is the roof plane of the main original hipped roof and further back is the slightly lower roof slope to the side wing. The line for determining what constitutes "*extend beyond the plane of any existing roof slope*" follows these two existing roof slopes.
12. From the submitted drawings and my site inspection, it would appear that the Council was correct to point out that the raised gable (or hip-to-gable loft conversion) proposed would extend beyond part of the forward-facing roof plane of the slightly lower hipped wing to the side. This part of the dwellinghouse would, as a result of those works, extend beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. This would conflict with the limitation at paragraph B.1 (c).
13. Consequently, I agree with the Council that there would be a failure to meet a relevant limitation applying to the proposed development, so that it would not amount to permitted development and would not benefit from the planning permission granted through the GPDO. The Council's decision and my interpretation are not out of step with the TG. The rear dormer and front roof

lights proposed fall away from any meaningful consideration since they would all rely, in one way or another, on the construction of the hip-to-gable loft conversion which I have found, on the balance of probabilities, would not have been lawful if begun at the time of the application.

14. The appellant has not directly addressed the reason why the certificate was not issued by elaborating in detail on the characteristics, form and location of the development proposed at the appeal property. Rather, the appellant prefers to rely upon six other sites (five in the borough of Harrow and one in the borough of Barnet) where similar roof extension schemes are said to have been approved. The Council has provided the results of its research on those sites. In short, this shows that two of the cases are now somewhat dated, another three may have different site circumstances or proposals and one was the subject of a householder planning application which would have addressed the planning merits and not the GPDO. Without being provided with any planning documents, especially the plans, for these six other properties set out in the written representations, I cannot form any meaningful conclusions of my own. In any event, I must evaluate the relevant evidence and law as I find them for the particular appeal proposal and appeal site before me.
15. For the reasons given above I conclude that the Council's refusal to grant a certificate 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.

Andrew Dale

INSPECTOR