

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/19/3226201

29 Lincoln Road, North Harrow, Harrow HA2 7RQ

- 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 (certificate).
 - The appeal is made by Mr & Mrs Sayfi against the decision of the Council of the London Borough of Harrow.
 - The application ref. P/0520/19, dated 3 February 2019, was refused by notice dated 5 April 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 loft conversion including rear dormer window and 2 rooflights to front elevation*".
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operations which are considered to be lawful.

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 appellants. The test of the evidence is made on the balance of probabilities.
5. The Council gives a more detailed description of the proposal in its decision notice. This is substantially repeated on the appeal form and acknowledges that the loft conversion would also include a hip-to-gable roof enlargement with a side window. I have therefore dealt with the appeal on the basis that a certificate is sought for *Alterations to roof to form end gable and rear dormer, installation of 2 roof lights in front roof slope and new side window*.
6. An amended drawing was submitted by the appellants at the final comments stage. This plan has not been considered since new evidence cannot be

accepted at that stage. Moreover, an appeal relating to a certificate application is confined to the narrow remit of reviewing the Council's decision, which would have been based on the plans before the Council at the time of that decision.

Main issue

7. The main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

8. The main issue turns on whether or not the proposed development would have amounted to permitted development at the time of the application.
9. The Council's decision notice states: *"The proposed dormer cheek is flush with the proposed gable end and does not have roof tiles that will match the existing main roof of the dwelling, therefore the materials used in any exterior of the dormer are not considered to be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and is therefore not within the tolerances of Schedule 2, Part 1 Class B.2 (a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended"* (GPDO).
10. 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, amongst other things, the conditions set out in paragraph B.2. One of those conditions at paragraph B.2 (a) states that development is permitted by Class B subject to *"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"*.
11. The document published by the Government titled *"Permitted development rights for householders Technical Guidance"* (TG) and last updated in September 2019 assists with the interpretation of the GPDO. The extract provided by the Council is from page 35. This states the following in relation to the condition at paragraph B.2 (a):

"This condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration. For example:

- the flat roofs of dormer windows will not normally have any visual impact and so, in this case, the use of materials such as felt, lead or zinc for flat roofs of dormers will therefore be acceptable.*
- the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house (sic). So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape."*

12. No. 29 is a 2-storey, semi-detached house with a hipped roof. The outer (eastern) cheek or flank of the proposed flat-roofed rear dormer would be presented as a continuation of the rendered wall face of the proposed hip-to-gable enlargement. Thus, the resulting side elevation of the house would have an asymmetrical roof profile with a flat roof to the rear part and a pitched roof to the front.
13. Readers of the Council's decision notice and certificate report would be expecting to find something within Class B which supports the view that there should be a separation distance between the proposed rear dormer and the verge of the proposed end gable. Like the appellants, I cannot find anything of relevance in the GPDO or the TG to cover this matter. Moreover, the Council has not directly pointed to any applicable limitation or condition in this regard. In an email dated 2 April 2019 from the Council to the appellants' agent it was suggested that the dormer cheek should be slightly moved in approximately 0.2 m. The GPDO does not deal with approximate measurements. The Council may well be confusing the eaves of a roof with the verge of a roof or alternatively negotiating design improvements beyond the terms involved in processing applications for certificates.
14. Having established that the appellants' preference for the rear dormer to be flush with the gable end is not at odds with the GPDO, the next issue concerns the facing materials for the outer cheek of the proposed dormer. I can understand why the Council seeks to rely on the advice on page 35 of the TG, as set out in paragraph 11 above. However, the TG is guidance, and not a statutory instrument like the GPDO itself. The wording of the GPDO remains the starting point. Given the very substantial variations in the design of individual houses, the TG cannot cover all possible situations that may arise. The specific circumstances of sites and proposals may also vary, as a matter of fact and degree and on a case by case basis.
15. In this case, where the proposed dormer would be clearly built up as a continuation of the rendered side wall face, rather than just sit in the centre of the roof surrounded by roof tiles (quite possibly the typical scenario envisaged in the TG), it seems reasonable to conclude, as the appellants have done, that the use of matching render for the dormer cheek would be of a similar appearance to those materials used in the construction of the exterior of the existing dwellinghouse. In the limited public vantage points on Lincoln Road that would permit views of the eastern gable end, in the narrow gap between the appeal property and no. 27, the dormer cheek would be seen to have a closer visual relationship with the end gable than with the roof, such that the matching render would minimise the dormer's visual impact and be sympathetic to the existing house.
16. The Council has not drawn my attention to any other specific decisions it has made or to any specific appeal decisions which might pull me in a different direction. The appellants, on the other hand, refer to 2 relatively recent decisions by the Council on certificate applications - 4 Lincoln Road (ref. P/2152/15) and 44 Earls Crescent (ref. P/1619/18) - where similar proposals to the appeal scheme before me were allowed. I was able to see the development at 4 Lincoln Road as it is diagonally opposite the appeal property. The existence of those cases has not been disputed by the Council. Whilst I have evaluated the relevant evidence and law as I find them for the

particular proposal and site before me, those other cases clearly lend some weight in favour of the appellants.

17. Consequently, in the light of the above and having taken into account all other matters raised, I judge on the balance of probabilities that there would not be a failure to meet the relevant disputed condition applying to the proposed development. It would thus amount to permitted development and would benefit from the planning permission granted through the GPDO.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR