



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: 6th January 2020

Appeal Ref: APP/M5450/X/19/3225064

8 Murray Crescent, Pinner HA5 3QE

- 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 Paul Solomon against the decision of the Council of the London Borough of Harrow.
 - The application ref. P/0037/19, dated 3 January 2019, was refused by notice dated 27 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 "*Loft Conversion*".
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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 appellants. The test of the evidence is made on the balance of probabilities.

Main issue

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

Reasons

6. Nos 8 and 10 comprise a pair of two-storey, semi-detached houses in the southern corner of Murray Crescent. They have a distinctive design in that both the front and rear roofs have two sides or slopes, with a hipped roof above a far steeper roof where the first floor windows are located. Each house also has an advanced two-storey bay, although the one at no. 10 is found to the rear. Since

the appeal property was built, it has been extended at the side principally, it seems, by a first floor extension above a garage under the historical application ref. HAR/13828 which was passed on 11 February 1958 according to the plans submitted by the Council. Two other applications relating to extensions at the side are also referred to in the Council's certificate report. The loft conversion proposed would include a hip-to-gable roof enlargement with a side window and a flat-roofed rear dormer.

7. The main issue turns on whether or not the proposed loft conversion 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 ("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. The Council refused the application on the basis that the proposal did not comply with the limitation at B.1 (d). 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 more than - (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case*". The house is semi-detached so the 50 cubic metres figure applies at B.1 (d) (ii). There is no dispute that the proposal would satisfy the other limitations and conditions of Class B.
9. There is also no dispute that the increase in roof space resulting from the proposed hip-to-gable roof enlargement and rear dormer, in themselves, would be less than 50 cubic metres. However, the Council included the volume of the roof in the side extension above the garage, permitted under HAR/13828, as part of the resulting roof space. The Council indicates that this earlier extension is not part of the original roof space, has been finished in matching roof tiles and is directly connected to the main dwelling and its roof tiles. This meant for the Council that the cumulative increase in roof space, resulting from the proposal and the side extension over the garage, considerably exceeded 50 cubic metres. It was on this basis that the certificate application was refused.
10. For the appellants it is argued that the Council should not have included the roof space of the first floor side extension in its calculation because it has a flat roof which is below the gutter level of the existing main roof. It is stated that the original roof space has not been touched and that no extensions have been built above the existing roof. On that basis the proposal is said to comply with the relevant limitation on volume.
11. In the interpretation section of Class B, paragraph B.3 says that "*resulting roof space*" means "*the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.*" The first floor side extension was granted planning permission separately and I have been given no reason to suppose that it formed part of the original house. In the main interpretation section to the GPDO the word '*original*' is stated to mean – "*(a) in relation to a building, other than a building which is Crown land, existing on 1st 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...*".
12. 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 TG says on page 34 with regard to paragraph B.1 (d) *"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."* It also states that *"'Original roof space' will be that roof space in the 'original building'."*

13. There is no clear definition of "roof space" in the GPDO or TG. It seems reasonable to me for this to include the volume of space found between the upper covering of the house and the eaves which is the part of the roof that meets or overhangs the walls of the house. Typically, where a two-storey house is effectively constructed of walls with a pitched or hipped roof above, then only the roof void could be reckoned. In this case however, the original property's distinctive design means that the eaves and the main guttering arrangements are found at the top of the lower storey, with obvious tiled roof slopes above covering the building and containing in part the upper storey of accommodation. Put another way, the habitable first floor accommodation sits within this roof space. This is perhaps best illustrated on the submitted cross-sectional drawing.
14. It is evident that when first built the original roof space would have been just the roof space under the main roof slopes as clarified above. The first floor side extension was clearly added later and cannot, therefore, be said to have formed part of the 'original' building. In seeking to establish if those extension works enlarged the 'original' roof space to the house, the TG would appear to suggest that they did, because this guidance refers to *"Any previous enlargement to the original roof space in any part of the house..."* Even though the roof over the first floor side extension is flat, the three sides of the structure have been brought up in roof tiles and the front and rear elevations are presented as a clear continuation of the lower, steepest roof slopes of the original house. Like the Council, I consider this to have been a roof enlargement and since it directly adjoins the original roof, it is a matter of logic that it must have added to the original roof space.
15. The current roof space comprises the 'original' space within the main roof, plus the added roof space of the side 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 side extension which, in itself, was an increase to the original roof space since the house was built.
16. I find, therefore, that the roof space of the side 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 permitted development since the volume of the proposed enlargement of the roof space, combined with the roof space as already enlarged by the side extension, would exceed 50 cubic metres. 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. I find, on the balance of

probabilities, that the proposed loft conversion would not have been lawful if begun at the time of the application.

17. I conclude that the Council's refusal to grant a certificate was well founded. The appeal has therefore been dismissed in accordance with the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR