
Appeal Decision

Site visit made on 12 February 2020

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 18th February 2020

APP/M5450/X/19/3232619 52 Merton Road, Harrow HA2 0AB

- 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 by the London Borough of Harrow Council to grant a certificate of lawful use or development.
- The appeal was made by Ms Gita Vagjiani.
- The application, reference P/5334/18, dated 3 December 2018, was refused by a notice dated 18 April 2019.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness of the proposed development.
- The development for which a certificate of lawful use or development was sought was for: Alterations to roof to form rear gable with window and side dormer to both sides.

Summary of decision: A certificate of lawfulness is not issued.

Appeal property

1. The appeal concerns the linked single storey house at No. 52 Merton Road, Harrow. It is in a row of similar houses. The house is deeper than it is wide. The ridge of the pitched roof runs perpendicular to the frontage of the house facing the road. The house has a hipped roof with a triangular slope at the front facing the road. There is another sloping section of roof set back about 1m with a slope parallel to the triangular slope built onto the left side of the roof when looked at from the road. Some 5.5m back from the front wall of the house on the other side of the house, there is a small hipped roofed projection of about 1.5m. A small section of the projection's roof faces towards the front of the house, partly hidden by a brick chimney.

Proposal

2. The Appellant, Ms Gita Vagjiani, wishes to extend her home by adding a large dormer window on each side of the roof. The hipped roof at the rear elevation would be replaced by a gable. The extensions would provide 3 bedrooms and a bathroom in the roof.

Inspector's considerations

3. The appeal project was to be a copy of extensions carried out on the similar next door but one house at No. 48 Merton Road. Ms Vagjiani was surprised by the Council's refusal to accept that her project was development permitted by The Town and Country Planning (General Permitted

Development) (England) Order 2015, (the Order). Her project was no different to that approved at No. 48.

4. The Council said the appeal project failed to comply with the limitations and conditions attached to the Order concessions in respect of 3 of its features. They were: (Article 3, Schedule 2, Part 1 of the Order):

- 1) *Non-compliance with Class B, condition B.1(c) – not to extend beyond plane of existing roof slope*
- 2) *Non-compliance with Class B, condition B.2(c)(ii) – windows in side elevation to be non-opening*
- 3) *Non-compliance with Class C, condition C.1(b) – alteration to protrude no more than 0.15m above roof slope*

I deal with the 3 points:

5. 1) Class B, condition B.1(c) – *development is not permitted by Class B if – B.1(c): 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 house has a staggered frontage to the road. There are 2 roof slopes at the front of the house facing the road. There is a third, much smaller road facing slope set well back at the other side of the house, over the small bedroom projection. This much less evident roof slope would be altered by the new dormer. That is because a short section of the projection's road facing roof slope would have part of the dormer built above it and forward of the existing roof slope. Because of that, the appeal project would not comply with condition B.1(c) of the Order. This conclusion may seem unduly pedantic as the effect on the appearance of this part of the roof would be scarcely noticeable, especially when compared with the substantial change the new dormers would have on the house. But Order concessions are not concerned with matters of planning merit or whether any measured failure to comply with a condition or limitation is large or small.
6. 2) Class B, condition B.2(c)(ii) – *any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be – (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.* The Council pointed out that there was no note on the application drawings to show that the project would comply with condition B.2(c)(ii). It may be a small point. But as conditions cannot be attached to a certificate of lawfulness, the details contained in the application must, in all respects, show that the concession conditions and limitations are met.
7. 3) Class C, condition C.1(b) – *development is not permitted by Class C if - the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof.* The problem here is similar to that set out in 2), (para. 6 above). There was no note on the application drawings to show that the project would comply with condition C.1(b). Again, the details contained in the application must show that the concession conditions and limitations are satisfied. Otherwise, the determining authority may refuse to issue a certificate.

8. A certificate of lawfulness cannot be issued in respect of any part of the works that satisfy the limitations and conditions of the Order. None of the elements of the intended extensions are separable in that they could be built in isolation to other parts. The failures to comply as set out above means that Ms Vagjiani's proposed extensions would not benefit from permitted development concessions in the Order. If a development exceeds permitted development limits, the whole development is unauthorised, the case of *Garland v MHLG [1968] 20P and CR 93* is authority for that position.

FORMAL DECISION

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of alterations to roof to form rear gable with window and side dormer to both sides at No. 52 Merton Road, Harrow HA2 0AB was correct and that the appeal should fail. I exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR