

Appeal Decision

Site Inspection on 9 March 2020

by Graham Self MA MSc FRTPI

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

Decision date: 16th March 2020

Appeal Reference: APP/J0350/X/19/3235391

Site at: 4 Furnival Avenue, Slough SL12 1DW

- The appeal is made by Mr A Ahmad under Section 195 of the Town and Country Planning Act 1990 as amended against the refusal by Slough Borough Council to grant a certificate of lawfulness.
- The application (Reference Number P/08962/001) dated 2 February 2019 was refused on 2 May 2019.
- The application was made under Section 192 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "Proposed loft conversion".

Summary of Decision: The appeal does not succeed.

Assessment and Reasons

1. The dispute in this case concerns the "permitted development" allowances provided under Article 3 and Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO"). These provisions of the GPDO grant planning permission for the enlargement of a dwellinghouse¹ consisting of an addition or alteration to its roof, subject to various provisos, restrictions and limits.²
2. Permitted development rights for additions or alterations to dwellinghouses under the GPDO only arise where the property in question is or was lawfully used as a dwellinghouse at the relevant date, which in this instance is the date of the certificate application. The main matter of dispute in this case is whether, at that time, the appeal property was lawfully a dwellinghouse.
3. Planning permission was evidently granted in 1991 for development at the appeal property comprising the erection of a single storey rear extension and conversion of the house into two flats. The council say that this permission was implemented and the re-conversion back into a house has not been authorised. The appellant says that the permission was not implemented, the property was never converted into flats and that the rear extension was built under permitted development rights.
4. At the time of my inspection building works were in progress at the appeal property, including the construction of a rear extension. A side extension had

¹ It is necessary for me to use the old-fashioned term "dwellinghouse" here because that is the term used in the legislation.

² The GPDO contains provisions for other roof alterations under Class C of Part 1 of Schedule 2, but this proposal would clearly not be permitted under Class C because of the extent of projection above the roof plane.

also recently been built. The property appeared to be in use as a number of separately-occupied rooms or as a house in multiple occupation, though the precise nature of the use was not clear. Be that as it may, the key date is 2 February 2019 when the certificate application was made.

5. As has been pointed out in written comments by the appellant's agent, a completion certificate from the council's building control department should have been presented if the building had been converted into flats. On the other hand, the council's evidence includes an officer's report noting that when the site was visited as part of the assessment of the application, separate meter cabinets and waste pipes were seen, suggesting the existence of an upstairs kitchen.
6. During my inspection I saw one external meter cabinet (next to the side extension) which appeared to be new. There were two adjacent kitchens on the ground floor, one obviously newly installed and one older. But the existing layout of the building does not provide clear evidence about the past. One of the difficulties I have in assessing the evidence in this case is that the appeal property has been subject to so much recent change that what I saw is not a good indication of how the property may have been laid out and used more than a year ago in February 2019.
7. Condition B.2(b)(i)(bb) of Class B of Part 1 of Schedule 2 of the GPDO³ provides that development permitted by Class B is subject to the condition that the roof enlargement must be constructed so that the edge of the enlargement closest to the eaves of the original roof is, so far as is practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. Although not mentioned as a reason for refusing the application, the council have referred to this condition and contend that the proposal would not provide the required 0.2 metres or 200mm set-back. The appellant's agent has drawn attention to the 240mm dimension labelled on the application drawing of the proposed side elevation.
8. It seems to me that neither side has fully considered this aspect of the proposal. The rear face of the dormer would have a full-length glazed opening with an external balustrade or railing. As far as I can tell by measuring from the submitted plans, this latter feature would project about 0.1 metre or 100mm from the face of the dormer. It would obviously be a fixture and would be an integral part of the roof enlargement, necessary for safety reasons. The 240mm dimension labelled on the elevation drawing does not allow for this item. Taking it into account, the edge of the dormer closest to the eaves of the original roof would be less than the 0.2 metres from the outside edge of the eaves specified in the GPDO condition quoted above. There is no reason why the "so far as is practicable" proviso should justify not applying this criterion.
9. The onus of proof in this type of case is on the appellant. The evidence put before me by both sides about the history of the appeal property is sketchy and largely based on assertion. There are no sworn statements, no independent confirmation (such as statements from a past occupier or a builder) of the date when the single-storey rear extension was built or the way the house was laid out and used at that time. It certainly did not appear to be used for single-family occupation at the time of my inspection. The council's evidence is weak, but so is the evidence for the appellant.

³ The council refer to this condition as "Condition B.2(bb)", although the incorrect reference is understandable given the convoluted structure of the GPDO.

10. On balance, I find that with regard to the site history, the onus of proof which lies with the appellant has not been met. I am not satisfied that the property was used as a single dwellinghouse at the time of the certificate application. In addition, I find that the proposed dormer would not be permitted by the GPDO because it would not comply with Condition B.2(b)(i)(bb) of Class B of Part 1 of Schedule 2. Therefore the appeal fails.
11. I add here a note about the application drawings. At the labelled scale of 1:50 at A3 size, the drawings of the proposed front and rear elevations depict the proposed dormer structure as having a width of about 2.8 metres. This is clearly incorrect, as the scale is wrongly specified. This point has not affected my decision.

Conclusion

12. For the reasons given above I conclude that the council's refusal to grant a certificate of lawfulness in respect of application reference P/08962/001) dated 2 February 2019 was well-founded. Therefore the appeal fails.

Formal Decision

13. I dismiss the appeal.

G F Self

Inspector