
Appeal Decision

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/F2415/X/19/3230647

51 Caxton Street, Market Harborough, LE16 9EP

- 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 (LDC).
 - The appeal is made by Mr and Mrs George Bridgeman against the decision of Harborough District Council.
 - The application Ref: 19/00078/CLU, dated 17 January 2019, was refused by notice dated 20 March 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful development is sought is an "L" shaped flat roof dormer loft conversion.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. Based on the evidence before me, the appeal can be determined without a site visit and both main parties were advised of this. The burden of proving relevant facts rests on the appellants and the test of evidence is made on the balance of probability.
3. The evidence before me indicated that the submitted drawings associated with the above application appeared to include inaccuracies. Both parties were given the chance to comment on this matter and the appellants submitted an amended plan¹ in their response. The amended plan does not materially alter the proposal as the amendments relate to one elevation and notation on the submitted version of that plan. As such, I have dealt with the appeal on the basis of the amended plan in combination with the submitted plans².
4. I acknowledge that the bottom line of the main rear dormer as shown on the rear (south) elevation is nearer to the main eaves of the dwelling than shown on the side (west) elevation. Nevertheless, that side elevation appears to correlate with the loft floor plan. The appellants' figures for the cubic content of the resulting roof space appear to be based on these latter dimensions which

¹ Ref No: 4107 – 6E

² Ref Nos: 4107-1A; 4107-2A; 4107-3B and 4107-4C

would have a smaller cubic content than those if the rear (south) elevation is accurate. Therefore, even if the submitted plans are inaccurate in this respect, it would not have altered my decision.

Main Issue

5. The main issue is whether the Council's decision to refuse the grant of an LDC was well-founded.

Reasons

6. Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 (the GPDO) sets out permitted development rights and accompanying limitations and conditions as they apply to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
7. Class B.1 (d) of the GPDO provides that development is not permitted by Class B if 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. In this case because the dwelling is a terrace house the 40 cubic metre figure applies. There is no dispute that the proposal complies with the other criteria and conditions of Class B.
8. The GPDO specifies that the term 'original' means, in relation to a building existing on 1 July 1948, as existing on that date and in relation to a building built after that date, as so built. The interpretation of Class B states that for the purposes of Class B 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by Class B or not. The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to interpretation of the GPDO. It states that any previous enlargement to the original roof space in any part of the house must be included in the volume allowance.
9. Both main parties have indicated that the roof space of 2 single storey extensions should be included within the calculations of the cubic content of the resulting roof space and I have no reason to disagree. Nevertheless, there is disagreement between the parties as to the cubic content of the resulting roof space.
10. The Council has stated in its Delegated Report that the cubic content of the proposed main rear dormer is 14.7 cubic metres, the proposed rear outrigger dormer is 19.7 cubic metres and the existing ground floor roof space is 5.8 cubic metres. It concludes that the resulting roof space would be 40.2 cubic metres and therefore the 40 cubic metre threshold would be exceeded. Nevertheless, it has also stated that due to inaccuracies with the submitted plans that the cubic content is difficult to calculate with accuracy and details of how it has derived these figures are not before me.
11. The appellants have stated within their final comments that the cubic content of the main rear dormer is 13.18 cubic metres. The calculation for that figure is included in those comments and they are based on the dimensions indicated

in the notations on the amended plan. Therefore, I have no reason to dispute this figure.

12. I note that the appellants consider that the Council's figure for the cubic content of the rear outrigger dormer should be utilised as it is below the figure indicated on their amended plan. However, as stated above I have little evidence to indicate how the Council derived that figure and the appellants' figures, as shown on the amended plan, are based on the dimensions on that plan and the associated calculations appear to be sound. As a result, I consider that the cubic content of the rear outrigger dormer would be 23.02 cubic metres (10.34+12.68).
13. The appellants have stated that the roof space of the ground floor extensions is 4.32 cubic metres and I have no reason to dispute this figure. The resulting roof space based on the appellants' figures is therefore 40.52 cubic metres and it would exceed the threshold within Class B.1.(d) of the GPDO. Consequently, the "L" shaped flat roof dormer loft conversion would not be permitted by Schedule 2 Part 1 Class B.1.(d) of the GPDO.

Other matters

14. I note that the Council also considered that the rear dormer over the outrigger does not constitute an alteration to the roof as the proposal involved raising the wall plate on the joint boundary. Both parties have submitted a number of appeal decisions to support their views in relation to whether the proposal should be considered against Schedule 2 Part 1 Class A of the GPDO. However, each case has to be considered on its individual circumstances. Even if, I concurred with the view that the proposal before me should be treated as an enlargement, improvement or other alteration of a dwellinghouse it does not meet the limitations and conditions of Class B.1.(d) of the GPDO. Therefore, this matter would not alter whether the Council's decision to refuse the grant of an LDC was well-founded.

Conclusion

15. Accordingly, for the reasons given above, I conclude that the Council's refusal to grant an LDC 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.

D. Boffin

INSPECTOR