



Appeal Decision

Inquiry Held on 26 November 2019

Site visit made on 16 December 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/B1930/X/18/3219544

56 Windermere Avenue, St. Albans, Hertfordshire AL1 5QN

- 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 A Edwards against the decision of St Albans City & District Council.
 - The application Ref: 5/18/1812, dated 2 July 2018, was refused by notice dated 23 August 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a roof extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The plans submitted with the application and appeal had several inaccuracies within them. It was agreed between the parties and myself that accurate plans of the 'as built' development would be submitted and that the appeal would be determined based on those revised plans. The Inquiry adjourned to allow for the plans to be submitted and it was then closed in writing on 13 January 2020. The revised plans are dated 5 December 2019 with a reference of Dwg.no:WMA.03.01. The site visit took place on 16 December 2019, after the submission of the revised plans.

Main Issue

3. The main issue in this case is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

4. The appellant stated in the application that the development was permitted development under Class B of Part 1 of Schedule 2 the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) 2015. The Council assessed the development as falling within Class A of Part 1 of Schedule 2 of the GPDO.

5. No 56 is a two-storey semi-detached dwelling with a pitched roof to the two-storey element and previously (i.e. before the development the subject of the appeal was constructed) a single storey flat roofed rear extension. The development the subject of the appeal consists of an upward projection to create a first-floor bedroom with en-suite, above the existing single storey flat roofed rear extension with a flat roof joining onto the pitched roof of the original dwelling.
6. The government has produced a document entitled Permitted development rights for householders Technical Guidance (TG) dated September 2019. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in a particular set of circumstances. It is a material consideration in this appeal. The TG advises that in order to be permitted development a proposal must meet all the limitations and conditions under each Class relevant to the development. It is essential that any development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights. It goes on to give examples of where development could be permitted development but falls within two classes.
7. Clearly the development at No 56 consists of the enlargement of the habitable space within the dwelling house. While the TG provides guidance on the interpretation of the GPDO I accept the appellant's point that 'only the Courts can rule on the law'.

Appeal decisions and case law

8. The Council and the appellant have referred to a number of appeal decisions. The GPDO relevant to this decision is that dated 2015 including amendments. Some decisions referred to are pre 2015¹ and the GPDO in those cases was dated 2008. In each of the pre-2015 appeal decisions referred to the development the subject of the decision was assessed against Class A of the GPDO applicable at that time.
9. The appellant refers to, and seeks support for his case from, an appeal decision at 17 Durham Road (reference APP/N5090/X/17/3167596). In that case the house was three storeys high with a two-story rear outrigger with a single sloping roof. The parties, in that case, considered the proposed development fell within Class B of the GPDO and the issue was whether it would comply with the limitations and conditions of Class B. The Inspector accepted the parties view that the development should be considered under Class B and found that it entailed, in effect, a dormer addition spread across and linking two upper rear pitched roof planes of the original house that differ in terms of their shape and level of their pitch. The Inspector found that it complied with the TG in force at the time, which was dated April 2017. In my view, the current appeal can be differentiated from this decision on its own merits. The current appeal does not link two upper rear pitched roof planes and, in my view, cannot be described as a dormer extension.
10. The Council refers to, and seeks support for its case from, the Lichfield Grove appeal decision (APP/N5090/X/16/3160315). This concerned a loft conversion including a rear dormer and roof extension, and roof lights. The Inspector in that case decided that the rear dormer would be an addition to the roof and

¹ The references of the pre 2015 decisions are APP/R3650/X/14/2222883; APP/M3645/X/13/2188444;

that the rear projection would be another storey placed on top of the flat roof and concluded that the development should be considered under both Class A and Class B. Again, the current appeal is different from the development in that case.

GPDO

11. While each class of the GPDO is mutually exclusive and thus deals with separate types of development, the TG clearly indicates that when considering whether a development proposal is permitted development all relevant parts of the GPDO need to be taken into account. It goes on to state that to be permitted development a proposal must meet all the limitations and conditions under each Class relevant to the proposal. In my view, there is nothing within the GPDO which prevents a development which through its form and design falls within two classes of development and meets the limitation and conditions of both relevant classes from being looked at in the round and found to be permitted development. Therefore, whilst the TG is simply guidance, I concur with it that a development may be permitted development if it is within one or more classes and meets all the limitations and conditions under each relevant class.
12. I also agree that where a development meets the description of development, the limitations and conditions fully in one class of the GPDO it is permitted development.

TG

13. Reference has been made to the diagram on page 21 of the TG which shows a previous rear extension and a new extension at first floor stating that this would not be permitted development under Class A. The diagram shows the new first floor extension lower than the eaves and roof of the original dwelling and is therefore different from the current proposal. However, I note that there is nothing within the TG which illustrates or provides guidance directly on the form of development the subject of this appeal.

Is the development permitted development?

14. Class B is titled '*The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.*' A simple reading of the title of Class B is that the enlargement i.e. development of an existing dwelling house, which comprises or has as its essential feature an addition or alteration of the roof of the dwelling house is permitted subject to meeting various limitations and conditions. However, prior to looking at the limitations or conditions of Class B, it is essential that the development form or type is determined. To be considered under Class B '*the development*' must consist i.e. have as its essential features², additions or alterations to the dwelling house roof³.
15. In this case, there is no sense that the roof of the ground floor extension remains as a roof, it becomes (if it remains at all) the floor of the first-floor addition and no longer performs the function of a roof. The resultant roof, to the rear extension, is no longer part of the roof of the rear element and a new roof is created on top of the vertical addition or storey.

² Definition of 'consist' Oxford Compact English Dictionary.

³ My emphasis.

16. In my view, the development the subject of this appeal is more than an addition or alteration to the dwelling house roof. The space that has been created is not within the roof space but within a vertical addition on top of the flat roof of the rear extension with an alteration to the principal roof of the dwelling house where it joins it. The alteration to the principal roof is a minimal part of the development. There is no enlargement of the roof space to provide extra space/enlargement within the dwelling house.
17. Moreover, limitation B.1.d limits the cubic content of the resulting roof space to 50 cubic metres in the case of the host dwelling. It then 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 this Class or not. The enlargement created by the development in this case is not, in my view, within the roof space, it is a first-floor extension. I therefore find that the enlargement to the dwelling house does not consist of an enlargement of the roof space but is a first-floor extension with alterations to the original roof of the dwelling house as a minor incidental to the development.
18. While I accept that there can be vertical walls within a Class B development such as a hip to gable extension, the predominant part of the development the subject of the appeal consists of an alteration or addition to a flat roof to create an additional storey. Whereas the in a hip to gable extension the enlargement of the dwelling house is within the roof space.
19. In the light of the above I find that the development does not fall to be considered under Class B, but is a development that falls to be considered under Class A as it consists of an enlargement, improvement or other alteration of a dwelling house. The Statement of Common ground records that the parties agree that if the development is assessed under Class A it would not constitute permitted development. I agree that the development fails to comply with conditions and limitations in Class A and thus is not permitted under this class.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a roof extension 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 as amended.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Fraser-Urquhart QC

Instructed by Mr M Harry

He called
Mr M Harry Dip Surv
FFPWS MCI Arb MCIH
FFPWA

Principal Consultant, Planning and Party Wall
Specialists Ltd acting for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Parkinson of Counsel

Instructed by David Edwards, Solicitor, St Albans
City and District Council

He called
Mr A Wright BA (Hons)
MA MCD MRTPI

Deputy Planning Team Leader, St Albans City
and District Council

DOCUMENT SUBMITTED AT THE INQUIRY

- 1 Bundle of appeal documents indexed submitted by the appellant