



Appeal Decision

by S Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Appeal Ref: APP/C1950/X/19/3241741

40 Great Ley, Welwyn Garden City, Hertfordshire AL7 4TR

- 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 Owen Brown against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2019/2092/LAWP, dated 21 August 2019, was refused by notice dated 7 October 2019.
 - The application was made under section 192(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 side dormer loft conversion.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The header above correctly quotes the description of the proposed development set out on the application form. The decision notice issued by the Council revises the description, but that can only be done with the appellant's agreement where a LDC is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (the Act). As there appears to be no agreement regarding the amended description, I shall therefore consider this appeal as described on the application form.
3. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case it shall refuse the application.
4. In an appeal under s195 of the Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities. No site visit was made in this case because the appeal turns on the interpretation and application of relevant law.

Main Issue

5. This is whether the Council's decision to refuse a LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under

Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

6. Under the provisions of Schedule 2, Part 1, Class B of the GPDO, a deemed planning permission is granted for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. The Council determined that the proposed development would not have been lawful, at the time of the application, because the proposed dormer loft conversion would extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. The proposal would therefore not fall within the limits of permitted development (PD) as set out in Schedule 2 Part 1 Class B (c) of the GPDO.
7. The appeal property is an end of terrace residential dwelling situated on a corner plot. The appeal rests on the Council's view that the principal elevation of the property is the south elevation which faces Oaken Grove, rather than the east elevation which faces Great Ley. The determining factor being that this elevation reveals the main architectural features of the dwelling, such as the main entrance to the house with porch/canopy and pathway leading up to the dwelling, driveway and vehicular crossover.
8. The appellant argues that the principal elevation is the east facing façade, relying on a previously determined LDC for a rear extension and guidance produced by the Department for Communities and Local Government *Permitted development for householders, Technical guidance* September 2019. This defines, at page 7, the term "Principal elevation" to be, in most cases, *"that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house"*.
9. The guidance continues with the definition saying *"there will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation"*.
10. The appellant notes that the postcode for 40 Great Ley is AL7 4TR, and that this post code serves the even numbers on the western side of Great Ley from Nos 10 through to 40. Furthering the argument, a previously determined LDC for the erection of a single storey extension to the western elevation is provided as evidence that the Council considered this elevation to be the rear of the property. The Council maintain that although the description was for a "rear" extension, the legislation (the GPDO) did not take the principal elevation into consideration within the assessment. The decision rested on the assessment that the development would not exceed the cubic content of the original dwellinghouse by more than 50 cubic metres.
11. Bearing in mind the technical guidance, as stated above, it falls to me to take a view as to which of these facades form the principal elevation. The south elevation facing Oaken Grove presents the main entrance to the house with the associated footpath from the public highway. However, this elevation presents

fewer openings and has no windows to the upper floor. Furthermore, there is a window at mid-level which lights the internal stairway and there are external drainage pipes which litter the façade. These, in my view, are features which are not associated with a principal elevation of a residential property.

12. Additionally, there are further examples of architecturally similar properties within proximity of the appeal site. Where these are not positioned on corner plots, it is apparent that the main entrance is a design feature of the side elevation. Accordingly, I consider that the principal elevation of the appeal property is the façade which faces Great Ley and therefore, the dormer loft conversion, as proposed, would be to the side elevation.
13. Schedule 2, Part 1, Class B of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to the limitations and conditions set out in subsequent paragraphs. The proposed dormer loft conversion to the side elevation would be within the limitations in Class B. However, the proposed vertical windows in the dormer loft conversion are not shown on the plans, or detailed anywhere in the application, as being obscure glazed. Furthermore, there is no indication as to whether the windows are either non-opening or with the parts of the windows which can be opened, more than 1.7 metres above the floor level in the rooms in which they are to be installed.
14. Therefore, I am not satisfied on the balance of probability and on the basis of the available evidence, that the windows in the dormer loft conversion would not breach condition B.2 (c) (i) & (ii) of Class B. Accordingly, I find that the proposal would not meet the conditions under Class B and would not therefore be permitted under Schedule 2, Part 1, Class B of the GPDO.
15. Accordingly, the appeal cannot succeed in respect of the proposed operations.

Conclusion

16. For the reasons set out above, I conclude that the development would not benefit from deemed planning permission granted by the GPDO at the date of the LDC, and express planning permission would be required. Consequently, the proposed development would not be lawful and the Council's decision to refuse the LDC was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

S Hanson

INSPECTOR