



Appeal Decision

Site visit made on 23 June 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

Appeal Ref: APP/T5150/X/19/3226239

100 Beverley Drive, Edgware HA8 5NE

- 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 Pravin Vagadia against the decision of the Council of the London Borough of Brent.
 - The application Ref: 19/0038, dated 26 November 2018, was refused by notice dated 4 March 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is for a single storey rear extension, alterations to roof to form gable with window in side, rear dormer, two rooflights in front roofslope.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There is no power for the Council or the Secretary of State to modify the terms of an application made under s192. The Council have, in its decision notice for the proposal modified the description of development. There is no indication that the appellants agreed to this modification or were content to allow an alternative modified description. I will therefore determine the appeal in relation to the description set out in the original application form.
3. The appellant states that the proposed loft and rear extension have been approved under reference 17/5032. The Council confirm that prior approval for a single storey rear extension (reference 17/5032) was not required. The rear extension measured 6m deep, with a maximum height of 3.2m and eaves height of 3m. The decision was dated 4 January 2018.
4. While the proposal comprises a single storey rear extension, alterations to roof to form gable with window in side, rear dormer, two rooflights in front roofslope rear extension the Council only considers the rear dormer element/alterations to roof to form a gable to not be permitted development under the GPDO. I see no reason to demure from the Council's conclusions in relation to the rear extensions, side windows and rooflights. I will therefore only address the rear dormer/alterations to form gable elements of the proposal in this decision.

Main Issue

5. The main issue is whether the decision of the Council was well founded.

Reasons

6. The Council considers that the development extends beyond the plane of an existing roof slope which forms part of the principal elevation of the dwellinghouse and fronts a highway. As such the Council state that the development fails to comply with conditions in Class B 1 (c) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
7. In particular the Council state that the front walls of No 100 are staggered and that there is more than one plane forming the front elevation which faces the highway. In its view the hip-to-gable and rear dormer while not projecting beyond the forward most front plane of the elevation does project beyond the slope of an existing section of roof which it considers is part of the front elevation and thus part of the principal elevation.
8. Principal elevation is not defined in the GPDO, but it is stated to be understood within the Government's Technical Guidance September 2019 'Permitted development rights for householders' (Technical Guidance) as:

'Principal elevation - in most cases the principal elevation will be the 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.
There will only be one principal elevation.'

9. The Technical Guidance in relation to condition B.1.(c) states that 'The principal elevation could include more than one roof slope facing in the same direction. For example, where there are large bay windows on the front elevation, or where there is an 'L' shaped frontage. In such cases, all such roof slopes will form the principal elevation and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes.'
10. For a proposal to be in breach of condition B.1 (c) the works have to extend beyond the plane of any **existing** roof slope which forms the principal elevation **and** fronts a highway (my emphasis). It does not matter whether there is another elevation that is considered to be a front elevation which fronts a highway, what is important is that the principal elevation is identified and then if that elevation fronts a highway then there may be a breach of limitation B.1 (c).

What comprises the principal elevation of No 100?

11. No 100 is a semi-detached dwelling with the front walls staggered at both ground and first floor level. There is a ground floor garage, with roof extending across the entrance door slightly in front of the two storey bay element. At first floor there is a side projection set back from the garage, extending over part of the garage at first floor level.

12. There are in my view, three steps at first floor level on the elevation fronting the road. The first is the bay window element, then another step in with the left hand side front first floor window, and then the side projection. There is the main roof with the ridge parallel to the road, with the bay window hip roof and the hip of the side projection roof running into the main roof. The main roof slope fronts the highway. Both the bay window and the side projection roofs have roof slopes which front the highway.
13. In my view, the principal elevation follows all the steps at ground and first floor that are seen from the road. As such, the side projection forms part of the principal elevation at first floor level.

The proposal

14. The proposed rear dormer extends beyond the roofslope of the main roof, incorporating the side projection and replacing the hip of the main roof and the hip of the side projection with a vertical wall joining back to the ridge of the main roof. The whole of the pitched roof of the side projection would be replaced by the vertical flank wall of the proposed dormer.
15. As the dormer flank elevation/gable alteration links back to the ridge line of the main roof (creating a hip to gable alteration) it projects closer to the road than the existing hipped roof which fronts the highway of the side projection. As I have concluded the side projection is part of the principal elevation, this part of the proposal is in breach of condition B.1 (c) of Part 1 of Schedule 2 of the GPDO.

Other matters

16. The appellant has referred to other similar developments in the immediate area. In his view, the proposal would be a coherent part of the building which would not detract from the character of No 100. However, the planning merits of a proposal is not relevant to the consideration of an appeal under section 195 of the Act, which relates to an application for a lawful development certificate. The decision rests on the facts of the case and on relevant planning law and judicial authority.
17. I note that the appellant states that an LDC was issued for development at 66 North Way. I saw this extension at my site visit. The Council state that the original roof form is not comparable to the current case or in the alternative that the LDC was issued in error. In my view, a decision of the Council does not provide judicial authority on the interpretation of the GPDO and I have therefore determined this case on the facts before me.

Conclusions

18. 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 single storey rear extension, alterations to roof to form gable with window in side, rear dormer, two rooflights in front roofslope 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