



Appeal Decision

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/W4705/X/19/3241555

2 Throxenby Way, Clayton, Bradford BD14 6EU

- 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 Arshad Anwar against the decision of the City of Bradford Metropolitan District Council.
 - The application Ref 19/03560/CLE, dated 20 August 2019, was refused by notice dated 15 October 2019.
 - 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 hip to gable roof extension and rear dormer window.
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Decision

1. I dismiss the appeal.

COVID-19

2. In response to the travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because of the particular nature of the appeal and the information provided by the main parties. Having been advised of this intended course of action, both parties raised no objection to the appeal proceeding on this basis.

Reasons

3. The question of lawfulness is distinct from any planning merits. The Courts have held that the onus on proving this lies with the appellant.
4. The development in question is a flat roofed rear dormer extension which, according to the LDC application plans, provides additional bedroom accommodation at second floor level.
5. In essence, the matter in dispute between the parties focuses upon the provisions of The Town and Country (General Permitted Development) (England) Order 2015 (GPDO), in particular Class B.1 (d) (ii) of Part 1 of Schedule 2, whereby the enlargement of a dwellinghouse consisting of an addition or alteration to the roof is permitted development provided that the volume of the resulting roof space does not exceed 50m³.
6. The background to the case is that planning permission was granted for a 2 storey side and single storey rear extension to the appeal property in April

2019 (ref 19/00712/HOU). According to the appellant, during the course of the construction of this scheme (together with a single storey rear extension for which it had been determined that prior approval was not required [Ref 19/02419/PNH]), the appellant decided to form an additional bedroom and en-suite bathroom within the roof space. At that point, the walls of the side extension had been built, but work to construct its roof – a hipped roof design – reflecting the hipped roof form of the host property – had not begun.

7. The parties' calculations of the volume of roof space attributable to the extension in question vary slightly (45.03m^3 and approximately 44m^3 according to the appellant and the Council respectively), but as both figures are below 50m^3 , I do not consider anything turns on this point. It is only when the volume of the additional roof space in the approved extension is taken into account that the 50m^3 figure referred to in Class B.1 (d) (ii) of Part 1 of Schedule 2 of the GPDO is exceeded. In this respect, I am mindful that the appellant has not disputed the Council's assessment that the volume of the roof space of the approved addition is about 35m^3 .
8. Referring to the stage the building work had reached when the hip to gable extension was added, the appellant contends the approved side extension did not exist then as it was not yet constructed, and so should not be included in the volume calculation for the resulting roof space.
9. I am unable to concur with the appellant's view for 2 reasons. Firstly, I accept that it may well be that no additional roof space had been formed when it was decided to add the hip to gable extension. However, given the stage the building works had reached, there must have been a reasonable expectation that a roof (together with its resultant volume) would be formed as part of the implementation of the approved side addition.
10. Secondly, judging by the plans for the hip to gable extension, it seems to me that rather than being a discrete 'stand-alone' building project, the extension in question was an integral component of the overall development scheme to provide additional accommodation at the appeal property. It was effectively a modification and enlargement of what had previously been approved. As such, and as a matter of fact and degree, the work appears to have been part and parcel of an ongoing project, albeit in a more extensive form than the one for which approval had been given. Indeed, the appellant refers to the work on the roof of the approved 2 storey extension running simultaneously and not having been completed until after the completion of the hip to gable addition.
11. It may be that, taken in isolation, the hip to gable extension would have been permitted development, as the appellant indicates. But, for the reasons given above, having regard to the particular circumstances involved in this instance, I do not consider this to be the case.
12. In the light of the foregoing, I am not satisfied that it has been demonstrated that the development in question falls within the parameters of Class B.1 (d) (ii) of Part 1 of Schedule 2 of the GPDO and so constitutes permitted development. In the apparent absence of any proper authorisation for the disputed development, I find that it is unlawful.
13. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

14. 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 hip to gable roof extension and rear dormer window at 2 Throxenby Way, Clayton, Bradford BD14 6EU 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.

D H Brier

Inspector