



Appeal Decision

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Appeal Ref: APP/G2245/X/20/3248603
2 Barnfield Crescent, Kemsing TN15 6SE

- 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 Mrs Karen Gosling against the decision of Sevenoaks District Council.
 - The application Ref 19/03487/LDVPR, dated 5 December 2019, was refused by notice dated 10 February 2020.
 - 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 a proposed loft conversion with rear dormer.
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Decision

1. The appeal is dismissed.

Procedural matters

2. For the avoidance of doubt, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an application for a lawful development certificate (LDC). Upon review of the appeal and the submissions from the appellant and the Council, I took the view that a rational decision on the appeal could be reached without the need for a scheduled site visit. The parties are aware of this and I have therefore considered the appeal on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC for the application was well-founded.

Reasons

4. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probability, the development would have been lawful, at the time of the application. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), grants planning permission for those classes of development described as 'permitted development' (PD) in Schedule 2. Part 1 of Schedule 2 permits development within the curtilage of a dwellinghouse. Class B goes on to set out permitted development rights for the

enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

5. It is accepted by the parties that the proposed development would, in itself, be under 50 cubic metres and it complies with the other conditions and limitations associated with Class B of the GPDO. The only point of dispute is Class B, B1(d), whether on the balance of probability, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house or 50 cubic metres in any other case. As the appeal property is a semi detached dwelling the relevant volume would be 50 cubic metres.
6. The dwelling benefits from a two storey side extension with a pitched roof. The extension joins the side wall and original gable of the dwelling, although the ridge line is lower than that of the main dwelling.
7. The main issue between the parties, is whether the volume of the roof of the extension should be taken into account, when calculating the volume and assessing whether the proposed loft conversion and dormer was lawful. The appellant submits that as the later extension leaves the original dwelling and roof intact, it did not enlarge the original roof space and therefore should not be taken into consideration when calculating the volume.
8. The Permitted Development Rights for Householders: Technical Guidance (the TG), whilst not determinative, provides useful information to assist with the interpretation of the GDPO. It states that any previous enlargement to the original roof space in any part of the house must be included in the volume allowance. The word original is defined in the General issues as ' "Original" - means a building as it existed on 1 July 1948, where it was built before that date, and as it was built, if built after that date.' On this basis the original dwelling would not have included the later extension and its roof.
9. The TG goes on to state that 'To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses. *Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance*' (my emphasis).
10. To my mind, the GPDO is perfectly clear in that one starts with the original dwellinghouse and then takes account of all subsequent alterations or enlargements. Accordingly, I consider that when assessing whether the 50 cubic metre limitation has been breached, it is necessary to consider both the volume of the original roof and the volume any previous enlargements, whether permitted by the GDPO, or express planning permission.
11. For the above reasons, I find that the two storey extension has provided additional roof space to the original property, whether it can be accessed from the original roof space or not. The Council's refusal to grant the LDC was well founded and therefore the appeal fails.

Conclusion

12. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for a proposed loft conversion with rear dormer,

was well-founded and that the appeal should fail. I will exercise accordingly, my powers transferred to me in section 195(3) of the 1990 Act as amended.

Hilary Orr

INSPECTOR