



Appeal Decision

Site visit made on 14 July 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2020

Appeal Ref: APP/U5930/X/19/3233019 108 Thorpe Road, London E7 9EE

- 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 Miss Kehinde Ojan against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 190462, dated 11 July 2017, was refused by notice dated 25 April 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 a dormer roof extension to main rear roof and extension above two-storey outrigger, together with installation of two roof lights to front roof slope.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was made under Section 192¹, to ascertain whether the operations proposed to be carried out on the land would be lawful. While not clear from the application form, the Council's decision notice and evidence confirms that the operations had, as a matter of fact, already started at the time of the application. The correct procedure to apply is Section 191, to ascertain whether the operations carried out on the land are lawful. The appellant and Council were contacted for their views. While no response was received from the appellant within the specified period, the Council agrees and I will proceed on this basis.
3. The description of development comprises of three elements. I have no evidence before me to suggest anything other than that these elements were carried out as a single building operation.
4. The submitted plans show the provision of a window in the side wall of the extension above the two-storey outrigger. The Council advise that this window has not been installed, which I confirmed during my site visit.
5. The submitted plans show the roof extension above the two-storey outrigger being set back from the eaves by 0.2 metres (m) and the lowest part of this extension being 0.22 m above the eaves. I saw that the side wall of this part of

¹ Town and Country Planning Act 1990 as amended

the roof extension has not been built in accordance with the plans as the side wall almost abuts the eaves. This is discussed further below.

Reasons

6. The appellant claims that the operation is lawful as it constitutes permitted development as defined by the GPDO² and therefore no enforcement action may be taken in respect of it. The burden of proof rests with the appellant.
7. Class B provides deemed consent for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Paragraph B.1 sets out a list of circumstances where development would not be permitted by Class B. Criteria B.1 (a), (e) and (f) are not relevant to this development. The evidence, and what I saw on site, confirm that the development accords with criteria B.1(b) and (c).
8. The host dwelling is a mid-terraced property. Criterion B.1 (d) requires that the cubic content of the resulting roof space should not exceed the cubic content of the original roof space by more than 40 m³ in the case of a terrace house. The Council's delegated report states that "the cubic content of the roof extension as shown on the plans is approximately 38 m³". However, drawing number A08 states the volume is 31.9 m³ and provides details of how the volume of the extension has been calculated. As the Council offers no explanation as to where the 38 m³, they reference, is stated on the plans or how it has been calculated, I give it little weight.
9. I have identified an error relating to the width dimension of the roof extension to the two-storey outrigger in the appellant's volume calculation. The plans show the rear dormer being considerably wider than the roof extension to the two-storey outrigger. As the dormer width is specified as 4.2 m, the width of the extension to the two-storey outrigger must be significantly less than the 4.3 m used in the volume calculation. Having regard to the scale bar on the other submitted plans, I have no reason to consider the other dimensions quoted to be incorrect. The correction of this error would result in the total volume of the roof extension being less than the 31.9 m³ stated on drawing number A08.
10. As set out above, the roof extension to the two-storey outrigger has not been inset from the eaves by the 200 mm specified on the plans. The additional volume resulting from this nominal deviation from the plan would not, however, increase the total volume of roof extensions from less than 31.9 cubic metres to over 40 cubic metres. For these reasons, I find the development to comply with criterion B1.(d)(i).
11. Condition B.2 sets out a number of conditional requirements that the development must also meet. The Council has raised no issue with compliance with criteria B.2(a) and B.2(b)(ii) and I have no reason to disagree. In respect of criterion B.2(c), as shown on the plans provided, the side window in the roof extension above the two-storey outrigger would conflict with this requirement. However, as set out above, this window does not exist, and a window has been constructed in the rear elevation instead. There are no restrictions on rear facing windows. I find no conflict with Conditions B.2 (a), (b)(ii) or (c).
12. Having regard to Condition B.2.(b)(i)(aa), the original eaves of the two-storey outrigger have been maintained in so far as the roof extension has been

² Town and Country Planning (General Permitted Development) Order 2015 as amended
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finished with tile hanging and is not quite in line with the side wall of the two-storey outrigger. The Council is correct in that the roof extension has not been constructed with a horizontal set back of 0.2 m, but this is not what the GPDO requires. I have no evidence to demonstrate that "the edge of the enlargement closest to the eaves of the original roof is ... not less than 0.2 m from the eaves"³ when measured along the roof slope. Furthermore, Condition (bb) says that the 0.2 m dimension from the eaves need only be achieved "so far as practicable".

13. Guidance on what is meant in respect of "so far as practicable" can be found in the Technical Guidance⁴. This advises that the 0.2 m set back will be required unless it can be demonstrated that this is not possible due to practical or structural considerations. It goes on to advise that "one circumstance where it will not prove practical to maintain this 0.2 m distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house".
14. The roof extension to the two-storey outrigger has similar characteristics to a dormer and it joins the dormer on the main roof, similar to the circumstance set out in the Technical Guidance. While the exception would apply to where the roof extension and dormer join, it could not apply to where the side wall of the roof extension is not inset from the eaves of the two-storey outrigger without justification. No evidence has been provided to suggest why the 0.2 m set back has not been provided for practical or structural reasons and as such Condition B.2(b)(i)(bb) is not met.
15. Class C provides deemed consent for any other alteration to the roof of a dwellinghouse, which would include the installation of roof lights. Several restrictions are set out in C.1 and the conditional requirements are set out in C.2. The Council has raised no issue with compliance with the criteria set out in C.1 and C.2 and I find no reason to disagree.
16. For the building operation carried out to be permitted development, all the relevant criteria and conditions must be met. It has been shown that the roof extension above the two-storey outrigger fails to be permitted development. As this forms an integral part of the operation applied for, it does not benefit from deemed consent and enforcement action could be taken.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the dormer roof extension to main rear roof and extension above two-storey outrigger, together with installation of two roof lights to front roof slope 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.

M Madge

INSPECTOR

³ Condition B.2(b)(i)(bb) of the GPDO

⁴ Permitted development rights for householders Technical Guidance April 2016

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