



Appeal Decisions

Site visit made on 12 November 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2020

Appeal A) Ref: APP/H1705/X/19/3237588 64 Flaxfield Road, Basingstoke RG21 8SF

- 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 Dermot Gallagher against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 19/01586/LDEO, dated 12 June 2019, was refused by notice dated 13 August 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 described as "loft conversion with a flat roofed dormer built to the rear of the house".
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Appeal B) Ref: APP/H1705/X/19/3237593 66 Flaxfield Road, Basingstoke RG21 8SF

- 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 Dermot Gallagher against the decision of Basingstoke & Deane Borough Council.
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 - 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 described as "loft conversion with a flat roofed dormer built to the rear of the house".
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Appeal A) Decision

1. The appeal is dismissed.

Appeal B) Decision

2. The appeal is dismissed.

Procedural Matters

3. These appeals relate to existing dormers that have been constructed on the roofs of 2 adjoining buildings. I have seen reference to the term "house in multiple occupation" and also to the 2 buildings having at some point, some shared accommodation, within previous documents appended to the Council's statement. However, there is no dispute by the Council in their formal

decisions or subsequent statements, that these are 2 separate buildings and that they are dwellinghouses.

4. The dormers have been constructed around the same time with cladding that extends across both buildings. Externally they could appear as one structure. However, the Council has not raised concerns within their decisions about the ability in principle to implement permitted development rights provided by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO), in this way. I agree that as a matter of fact and degree, these are 2 separate developments on 2 separate dwellinghouses for the purposes of the GPDO.
5. I have considered each case individually. However, because the appellant is the same in both cases, due to the similarities between the developments and because they relate to adjoining dwellinghouses, I have considered these appeals within a single decision.

Main Issues

6. The Council consider that the proposed development would not comply with Article 3, Schedule 2, Part 1, Class B of GPDO. The main issue in both appeals is whether the decision was well founded. The onus is upon the appellant to demonstrate their case. Planning merits are not of relevance as the appeals will turn on matters of law.

Reasons

7. With respect to the developments in both appeals, the Council states that the plans that were submitted were imprecise and ambiguous. These have since been clarified by further submitted plans and explanations. According to the appellant's calculations in both cases, the dormers are just below the 40m³ allowed for by Schedule 2, Part 1, Class B of the GPDO. The Council has not confirmed their position with respect to those revised plans or provided me with an alternative set of calculations.
8. I consider that the way in which the appellant has approached their calculations is reasonable as clarified by the resubmitted information. On the balance of probabilities, the dormers on each property appear to fall within the 40m³ volume limitation in paragraph B.1(d)(i).
9. Schedule 2, Part 1, Class B of the GPDO also includes conditional requirements within paragraph B.2. Sub-paragraph (a), requires the materials used in any exterior work to be of "similar appearance to those used in the construction of the exterior of the existing dwellinghouse".
10. To interpret the meaning of the words within the GPDO it is necessary to do so using the ordinary meaning of the language in broad, common sense terms. Whether those words achieve what was intended by the legislation, is not for me to go into within this appeal and I cannot consider the respective merits of these or other materials. The wording of this condition uses terms which will inevitably lead to some interpretation.
11. The expression "similar appearance" requires a fact and degree judgement taking account the appearance of the existing materials. The appellant has referred to advice that comes from the document "Permitted development rights for householders Technical Guidance" (TG). The quoted section states

- that “the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level.” The dormers on these properties have dark-grey horizontal cladding boards covering most of their exterior walls.
12. The existing dwellings in these cases both have roofs with a profiled tile which appeared to me to have a reddish-brown hue and the walls are partly red-brick and partly cream-painted render. Profiled tiles remain on the rear roof-slope alongside the dormers and there is also some grey lead-work flashing. However, the grey lead is substantially lighter in tone than the dark grey cladding. Whilst the cladding is more similar in appearance to the flat, dark-grey slates on the adjoining property, there are no similar materials that I could see on these dwellinghouses as required within paragraph B.2.(a). No 64 includes an existing front dormer but that has white horizontal cladding which is not similar to the grey cladding used in the development and so does not assist the appellant’s case in relation to that property.
 13. The further matter in contention in both cases relates to conditions B.2.(b)(i)(bb) and B.2(b)(ii) of the Class B permitted development rights. These conditions state.
 B.2.(b) the enlargement must be constructed so that:–
 - (i) other than in the case of a hip to gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension -
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2m from the eaves, measured along the roof slope from the outside edge of the eaves; and
 - (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.
 14. In relation to condition B.2 the TG states that “The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an ‘L-shaped dormer’ on a main roof and ‘outrigger’ or ‘back addition’ roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other.” The dormers both have an ‘L’ shape that would extend from the main roof of the dwellings onto the roof of the rear projections. The dormers, as a matter of fact and degree, are an enlargement which joins the main roof to the roof of the outrigger. Conditions B.2(b)(i)(bb) and B.2(b)(ii) do not therefore apply.
 15. Notwithstanding my assessment regarding the conditions in paragraphs B.2.(b)(i)(bb) and B.2(b)(ii) which is consistent with the advice in the TG, due to my conclusion regarding the materials and the condition in paragraph B.2.(a), the developments do not comply with the permitted development rights as set out in Class B.

Appeal A Conclusion

16. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of “loft conversion with a flat roofed dormer built to the rear of the house” 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.

Appeal B Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "loft conversion with a flat roofed dormer built to the rear of the house" 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.

A Harwood

INSPECTOR