



Appeal Decision

Site visit made on 10 November 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 5 January 2021

Appeal Ref: APP/W5780/X/20/3253492

30 Selwyn Avenue, Newbury Park, Ilford IG3 8JP

- 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 Kuldeep Mann against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 0386/20, dated 5 February 2020, was refused by notice dated 27 March 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 described as *'Loft conversion and rear dormer with raised party walls.'*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 5 February 2020. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
4. It should be borne in mind that previous Council or Inspector decisions do not constitute case law. Nonetheless, the findings and approach to a particular matter may be material. There is a need for consistency in the planning process, but I am not bound to reach the same conclusions as previous decision makers provided there are sound reasons for departing from a previous decision. I must evaluate the evidence presented in relation to this particular proposal and site.

Main Issue

5. From the Council's representations the matter of contention is whether the proposed roof extension falls within the parameters of "permitted development rights" (PD) conveyed by Class B of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995, as amended.

6. Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. In particular, paragraph B.2(b)(ii) says that, 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 shall extend beyond the outside face of any external wall of the original dwellinghouse.
7. The Council considers that, by way of the submitted drawings, the proposed extension to this terraced dwelling would extend beyond its respective boundaries with the roofs of both Nos 28 and 32.
8. The main issue in this appeal is whether the development, in its entirety, would be within the curtilage of the dwellinghouse and, therefore, whether the Council's decision to refuse the LDC was well founded.

Reasons

9. The householder classes within Schedule 2, Part 1 of the GPDO allow for '*Development within the curtilage of a dwellinghouse*' which, if satisfying certain provisos, can be built without the need for a formal grant of planning permission. The GPDO's accompanying Technical Guidance document defines residential curtilage as land which forms part and parcel with the house.
10. In this particular instance, to confirm the form and extent of the proposed extension, I have had regard to the proposal's description on the application form and also the submitted illustrative drawings; namely, No M98371/8 (Proposed Elevations), No M98371/11 (Existing & Proposed Roof Plan) and No M98371/7 (Proposed Loft floorplan, with Raised Party-wall). All have been prepared for the purposes of approval under current Building Regulations, and all show that the party-walls would be significantly raised upwards, thereby becoming part of the roof and extending beyond the boundaries and encroaching upon Nos 28 and 32.
11. I note the appellant's comments that the functional relationship between the adjoining buildings relies upon the party walls and requires for an overlap. Nonetheless, even though the degree of encroachment would be limited, the fact that the proposal transgresses the dwelling's boundaries means that it would represent development outside the curtilage of the dwellinghouse to be extended, and does not thereby satisfy the fundamental GPDO criteria.
12. In the circumstances, should the appellant wish to proceed with the proposal the dormer extension shown would lawfully require the benefit of planning permission. To this end a formal planning application would need to be submitted to the Council for determination, and its acceptability would be assessed in accordance with policy and guidelines. Accordingly, given my findings, rather than 'Certificate A' being completed on the relevant form, the application would necessitate the completion of 'Certificate B' as, due to the extent of the development, it would partially fall outside the curtilage of No 30.

Conclusion

13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC for the proposed roof extension at 30 Selwyn

Avenue, Newbury Park, Ilford IG3 8JP was well founded. The appeal does not therefore succeed.

14. Accordingly, I will exercise my powers under section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR