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# Appeal Decision

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 February 2021**

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**Appeal Ref: APP/L5810/X/20/3257461**

**80 Lowther Road, Barnes, London SW13 9NW**

- 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 c/o Attic Conversions Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 20/1624/PS192, dated 16 June 2020, was refused by notice dated 2 July 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 the formation of gables and ridgeline together with the construction of a flat roof dormer on the rear roof pitch. Insertion of two conservation roof lights on the front roof pitch.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. “Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit.” In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

## Main Issue

4. The main issue is whether the Council’s decision to refuse to grant a certificate of lawful use or development was well-founded.

## Reasons

5. The appeal relates to a detached, two storey dwelling that has been extended to the side and rear at ground level and to the rear at first floor level. The existing roof is hipped on all sides with projecting hipped elements to the front and rear. The appellant proposes to change both side hips and parts of the

- front and rear hips to a gable shape on the sides and to construct a flat roof dormer within the rear roof. This would involve the creation of a crown roof between the new side to side ridgelines. There would also be two roof lights within the front elevation.
6. The Council advise that there are no Article 4 Directions removing permitted development rights with regard to above ground extensions and the building is not listed. It is also not sited within a conservation area.
  7. The principle point at issue is the Council's determination that the proposal does not fall to be considered against Classes B and C, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This is because although the parties agree the proposal would be an enlargement of the dwelling, the Council considers it would go beyond "an addition or alteration" and would amount to demolition and reconstruction. I see no reason to take a different view from what the parties agree on and I find, as do the parties, that the proposal would accord with the various criteria set out in Classes B and C. The point of contention is whether the development would amount to either an addition or alteration to the roof.
  8. Class B of the GPDO states the enlargement of a dwelling consisting of an addition or alteration to its roof is permitted development (PD), subject to various criteria. Class C states that any other alterations to the roof of a dwellinghouse are PD, subject to various criteria. From the plans it would appear that in order to achieve the necessary head room and make the most of the available floorspace within the roof, it would be necessary to fundamentally change the shape of the roof. The works involved would be significant and, in my view, would entail the removal and remodelling of most of the roof during construction. I find that this would be the case as drawing No 006/130-WO2 is annotated "hip to be removed and new gable formed" along a line drawn from the rear chimney stack to the ridge of the small tiled roof over the front portion of the former garage, which is now a habitable room. This line refers to most of the roof but excludes the small front and rear hipped projections.
  9. The Council rely, in part, on counsel's advice to support their decision. This was prepared in 2007 when the 1995 GPDO was in operation. They acknowledge the age of the advice but submit that the wording of Class B has not changed significantly and it is the approach to the question of lawfulness within the advice that is emphasised by them.
  10. The details of what were before counsel are not before me but overall the advice serves as a reminder that before considering whether a particular proposal accords with the limitations set out in a Class of PD, it is first necessary to decide whether the proposal falls to be considered against that Class.
  11. In this case "addition", "alteration" or "other alteration" are still not defined in the 2015 GPDO and it therefore follows whether the proposal amounts to an "addition", "alteration" or "other alteration" is a matter of fact and degree.
  12. Having regard to the details on the drawings, it is my view that around three quarters of the original roof would be removed. The appellant's response to the Council's case is to submit what is referred to as an "indicative plan of retained structure". This comprises the same drawing No 006/130-WO2 as

before but with markings roughly hatching the edges of the main roof and the front and rear hip projections to indicate that these areas would be retained. There are no detailed construction drawings to demonstrate the extent of what would be retained. In reality, I find it is more than likely that the ends of the rafters on the edge of the roof, as shown in the hatched area on the plan, would not be retained as most of them would be lying in the wrong direction to serve the new roof. I also find that the front and rear hipped projections amount to secondary features in comparison to the size of the main roof. As a matter of fact and degree I find the proposed development would not therefore amount to either an "addition", "alteration" or "other alteration" to the roof as a substantial part of the original roof structure would not remain.

13. The appellant's argument is largely that the Council are being inconsistent in their decision making and they refer to a number of cases to support their point. On the basis of just the information submitted by the appellant, it is my view that two of the cases would amount to an addition or alteration of the roof falling within Class B (No 1 Hawley Way and No 18 Gordon Avenue) and two would not (No 3 Well Lane and No 34 Vicarage Road). This is due to the substantial part of the roof that would be replaced in respect of Well Lane and Vicarage Road for those designs. These judgments are matters of fact and agree and no two cases are alike. The decisions made on those applications do not direct my own conclusions. I take them into account but they rely on their own particular circumstances and the evidence before those decision makers.
14. To summarise, the appellant's appeal is confined to establishing the lawfulness, or otherwise, of the proposed development at the appeal site, based on the description of the development and the information shown on the drawings. I find, for the reasons given above, that the proposed development would not be an addition, alteration or other alteration to the roof of the dwelling for the purposes of Classes B and C of the GPDO. As such, the conditions and limitations of those classes do not fall to be considered.

## **Conclusion**

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the formation of gables and ridgeline together with the construction of a flat roof dormer on the rear roof pitch and the insertion of two conservation roof lights on the front roof pitch 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 Fleming*

INSPECTOR