
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2021

Appeal Ref: APP/T5150/X/20/3247496

53 Woodhill Crescent, Harrow, Middlesex HA3 0LU

- 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 Ivan Hrezdac against the decision of the Council of the London Borough of Brent.
 - The application, Ref 19/3315, dated 16 September 2019, was refused by notice dated 14 January 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 hip to gable roof extension, rear dormer, rooflights
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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.¹
3. The date of the application is usually taken from the application form but in this case the appellant has submitted a copy of an application form from another development at the site. I have therefore relied on the information provided in the appeal form completed by the appellant for the date of the application and the description of the development.
4. The Council changed the description of the development to "Certificate of lawfulness for removal of pitched roof and chimney, and proposed erection of hip to gable end extension on both sides of dwelling, rear dormer, and installation of three front roof lights to bungalow." It is not known whether the Council obtained the applicant's approval before making this change. As the appellant has not relied on this description in the appeal form, it would appear that he does not agree with it and I have therefore proceeded on the

¹ 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.

basis of the description set out in the bullet point above. I will return to this point in my reasoning.

5. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of section 192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes B, C and G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
6. The Council Officer's report lists other applications for development at the site which have been approved but it is not known whether they have been built. These include an LDC for a proposed roof alteration comprising two gable end extensions, a rear dormer window and the installation of three roof lights. My decision on this appeal is only in respect of the development shown on the drawings accompanying this application and whether, if this scheme were implemented, it would be lawful.
7. Prior to the determination of the appeal, I sought the views of the parties as to whether the proposals would fall to be considered against Class B "The enlargement of a dwelling house consisting of an addition or alteration to its roof" when it appears that a substantial part of the original roof structure would not remain after the development was completed. The responses from the parties have been taken into consideration in reaching a decision on this appeal.
8. For the avoidance of doubt, I would also point out that an LDC under section 192 is not the equivalent, in law, of a planning permission. Therefore, the issue of planning merits and the comments from third parties relating to loss of light and privacy, harm to the character and appearance of the area and parking matters do not fall to be considered in this appeal.

Main Issue

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

Reasons

10. The appeal relates to a detached bungalow where the main part of the roof visible from the road is hipped on both sides. The building has a staggered front elevation with a projecting hipped roof feature over the lounge. There is also a projecting deep rear element to the building that also has a hipped roof, which covers the existing main bedroom, bathroom and part of the kitchen.
11. The appellant proposes to alter the main hipped roof so that it has a gable end on both sides and to add a rear dormer to this element, with rooflights overlooking the front of the property. He also proposes to remove the hipped roof from the projecting rear element and replace it with what is said to be a

dormer.² This would have a flat roof and would be set back from the end elevation leaving a small flat roof area over part of the ground floor bedroom. The extensions would be joined to form one 'L' shaped extension. The changes would also involve the removal of a chimney.

12. It would appear that there are no Article 4 Directions removing permitted development (PD) rights with regard to roof extensions and the building is not listed and is not situated in a conservation area. The Council find that the proposed rooflights would comply with Class C of the GPDO and the proposed removal of the chimney would comply with Class G of the GPDO. I see no reason to take a different view.
13. Class B of the GPDO states the enlargement of a dwelling consisting of an addition or alteration to its roof is PD, subject to various criteria. The parties agree that the proposals would be an enlargement of the dwelling. I find that the principle issue is whether that enlargement would go beyond "an addition or alteration" so as to amount to demolition and reconstruction. The GPDO does not define "addition" and "alteration" to the roof and it therefore follows whether the proposal amounts to an "addition" or "alteration" is a matter of fact and degree.
14. From the plans it would appear that in order to provide two bedrooms and two bathrooms within the roof space it would be necessary to fundamentally change the shape of the roof. The only portion which would remain inclined and tiled would be the front elevation slope as the majority of the rear roof would be one large expanse of flat roof.
15. The works involved would be significant and, in my view, would entail the removal and remodelling of most of the roof during construction. This is apparent from the information shown on the existing and proposed roof plans and the proposed section drawing. Having regard to the details on the drawings, it is my view that around three quarters of the original roof would be removed.
16. The appellant submits that it is common for Class B roof extensions to involve the replacement of large parts of the existing roof. That may be the case where the building has a simple dual pitch design and the development involves an alteration of a hip to a gable end and the addition of a single dormer. However, in respect of the appeal site, the roof of the building comprises two main elements with the size of the rear element on a par with the front element, albeit marginally smaller, and the proposed dormer and the first floor extension (referred to as a dormer by the appellant) would occupy the majority of the overall roof area.
17. There are no detailed construction drawings to show what would be retained of the original roof. However, it is obvious, given the extent of the proposed alterations, that there would be a significant amount of demolition and reconstruction in respect of more than half of the roof area. As a matter of fact

² Whilst the roof extension over the dining room could be described as a dormer, in that it would be an extension outward from a roof slope, with a window, the extension over the rear ground floor bedroom, in my view, would not be a dormer. This is the case even though it would be joined to the dormer over the dining room. This is because the extension over the rear ground floor bedroom would not project outwards from a roof slope as the entire roof over this part of the dwelling would be removed. This part of the development would therefore be a flat roof first floor extension.

and degree, I find the proposed development would not therefore amount to either an "addition" or "alteration" to the roof as a substantial part of the original roof structure would not remain. As such, the development would not be lawful as it would not be PD.

18. Notwithstanding this finding, I shall also consider the difference between the parties over the interpretation of Class B.2(b)(i) in relation to the set back of the first floor extension from the eaves.
19. The Council consider that the proposed extension to be erected over the ground floor bedroom, bathroom and part of the kitchen should be set back 0.2m from the eaves on both sides of the roof. The appellant submits this would not apply where there would be a hip-to-gable enlargement.
20. Paragraph B.2 sets out the conditions for development permitted by Class B. It states within paragraph (b) that the permitted roof enlargement must be constructed so that, other than in the case of a hip-to-gable enlargement, the eaves of the original roof are maintained or reinstated and the edge of the enlargement closest to the eaves of the original roof is, so far as is practical, not less than 0.2m from the eaves.
21. In order to determine whether this condition would be complied with, it is first necessary to outline what is understood to be a hipped roof and what is a gable roof. I will then consider how this is applicable to the proposed development. I find in simple terms that a hipped roof is where all roof sides slope downwards towards the walls. A gable roof is where two sides slope downwards toward the walls and the other two sides include walls that extend from the bottom of the eaves to the peak of the ridge.
22. The appellant proposes to change the hipped area over the lounge and dining room to a gable roof (gable end No 1). The hipped area over the ground floor front bedroom and kitchen also extends over the rear element of the building and then ends in another hipped feature. However, the second gable roof end would only be formed from part of this extended hipped element, namely over the ground floor front bedroom and part of the kitchen (gable end No 2). This is shown in the Proposed right side elevation. It can be clearly seen that there would be two sides of a roof sloping downwards. The remaining part of the extended hipped roof ending in the hipped feature overlooking the garden would be completely removed and replaced with a first floor extension.
23. If the "dormer" (the appellant's description for the first floor extension) was only formed on the inside roof slope of the existing extended hipped element over the rear ground floor bedroom and bathroom, and the hipped end was extended to become a gable end (gable No 3), then there would only be a need to comply with a 0.2m set back from the eaves on the inside roof slope.
24. However, the appellant proposes to erect a first floor extension over the ground floor rear bedroom and bathroom. The existing hipped roof over this area currently has eaves on all three sides. The entire existing roof over this area would be removed so there would be no hip-to-gable alteration and the end of the hipped roof would not be replaced with gable end No 3. Instead, the appellant proposes a small flat roof area over the ground floor rear bedroom.
25. The effect of the condition in paragraph B.2 of Class B is that where there is no hip-to-gable alteration, the eaves of the original roof are required to be

maintained or reinstated. The appellant's drawings do not show that this would be the case and they also do not show that the proposed extension over the ground floor rear bedroom and bathroom would be set back 0.2m from all of the eaves. This element of the proposed development would therefore not comply with the conditions referred to in Class B. As all the development is required to comply with all the limitations and conditions in Class B in order to be PD, the proposed development would not be lawful.

26. 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 development and the information shown on the drawings. I find, for the reasons given above, that the proposed development would not be an addition or alteration to the roof of the dwelling for the purposes of Class B of the GPDO. As such, the conditions and limitations of Class B do not fall to be considered.
27. Notwithstanding this, even if the proposal did fall to be considered against Class B, I find, for the reasons given, that it would not accord with all the limitations and conditions of Class B so as to be PD.

Conclusion

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a hip to gable roof extension, rear dormer and rooflights 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