



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/M5450/X/21/3267016

93 Headstone Road, Harrow HA1 1PG

- 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 Qasim Gulamhusein against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/4161/20, dated 17 November 2020, was refused by notice dated 12 January 2021.
 - 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 loft conversion and ground floor rear extensions.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the appellant's original application form, noting that the Council in their decision notice used a longer version which listed all parts of the proposed development. However, under s.192 there is no implied power to modify the description of the proposed development.
3. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.
5. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.
6. The proposed development includes two single-storey extensions to the rear, a wrap-around rear dormer and two rooflights in the front roof slope.

7. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Article 3 Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to development within the curtilage of a dwellinghouse and grants permission for the enlargement, improvement or other alteration of a dwellinghouse, including additions and alterations to the roof.
8. There is no dispute that the proposed single-storey extension, off the existing dining room, would constitute permitted development by virtue of Article 3 Schedule 2 Part 1 Class A of the GPDO and, that the rooflights would constitute permitted development by virtue of Class C of the GPDO.
9. The house is a terrace for the purposes of the definition in the Government's Technical Guidance¹. Therefore, in order to constitute permitted development by virtue of Part 1 Class B of the GPDO, amongst other criterion, the cubic content of the dormer should not exceed 40 cubic metres (B.1.(d)(i)).
10. In the original application form the appellant stated that the volume of the dormer would be no more than 50 cubic metres. However, the Council's own calculations indicate that it would be 39.82 cubic metres and therefore would comply with the Class B.1.(d)(i) requirement and would constitute permitted development by virtue of Part 1 Class B.
11. The sole reason for refusal relates to the proposed single-storey extension to the rear of the two-storey outrigger, on the basis that the proposal would see the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.

Main Issue

12. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

13. The appeal property is an end of terrace house with a two-storey outrigger to the rear, with the rear of the outrigger including a further two-storey projection. Consequently, the rear is stepped and there is more than one wall which forms 'the rear wall of the original dwellinghouse'. However, this also means that the dwelling has more than one side elevation wall.
14. Paragraph A.1.(j)(iii) of Class A of the GPDO states that development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.
15. The Technical Guidance indicates that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front or rear wall. In this case whilst the two-storey projection is a detail of the outrigger and although the depth of this element at around 60cm may be relatively limited, it nevertheless creates two walls which cannot be identified as a front or rear wall.

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

16. The proposal includes the erection of a single-storey extension which would be the full width of the outrigger and would 'wrap around' and therefore extend beyond the side walls of the two-storey projection.
17. Accordingly, since the proposal would see the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and would have a width greater than half the width of the original dwellinghouse, it would fail to meet the Class A.1.(j)(iii) requirement. Hence it would not be permitted by Class A of Part 1 of Schedule 2 of the GPDO.
18. The appellant referred to another appeal decision however, that case supports my judgement. Indeed, in that case the wall was only 10cm in depth and was considered to constitute a side elevation.

Conclusion

19. The proposal does not comply with all the limitations and conditions in Class A and therefore is not permitted by the GPDO. It follows that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the proposal 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.

Felicity Thompson

INSPECTOR