



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2021

Appeal Ref: APP/H5960/X/20/3257812
26 Balvernie Grove, London SW18 5RU

- 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 Mrs Sonia Cuesta against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2019/5557, dated 19 December 2019, was refused by notice dated 14 February 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 for a rear dormer loft conversion over back rigger, this will allow for the addition of one bedroom. The dormer will have one window facing the garden and one window facing the side (obscure glazed and non-opening below 1.7m from floor level). One flat roof window will be installed in the existing mansard flat roof to allow light to the staircase. Materials are to match the existing. a rear dormer roof extension over rear roof outrigger.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both the appellant and the Council were contacted and given the opportunity to comment. No comments were received.
3. The Council changed the description of development to "erection of roof extension above two-storey back addition." Where an application is made under s192 of the Act it is for the applicant alone to describe what it is they wish to do. The development for which the LDC is sought was described on the application form as set out in the last bullet point above. The appellant has then described the development on the appeal form as a "rear dormer roof extension including over rear roof outrigger." As the appellant has not relied on the Council's description in the appeal form, it would appear that he does not agree with it and I have therefore proceeded on the basis of the description of development as contained on the application form.

4. An LDC under s192 is not the equivalent, in law, to a planning permission. Therefore, the appellant's submissions relating to delivering high quality living accommodation with sufficient levels of light and outlook do not fall to be considered. The decision will be based strictly upon the facts of the case and relevant planning law.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. The appeal property comprises a two storey mid-terrace house. The property has been extended with a rear dormer extension to the main roof and a single storey rear/side extension.
7. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants permission for classes of development described as permitted development (PD) in Schedule 2 to the Order. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class B of Part 1 specifically addresses the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
8. The property has a two-storey rear outrigger with a mono-pitched roof which is at a lower level to the main roof of the house. The appellant proposes to extend above the roof of the outrigger to provide an additional bedroom and describes the proposal as a "*rear dormer loft conversion over back rigger.*" It is the appellant's case that because the additional height of the proposed development is no larger than the existing dormer window in the rear roof slope of the main house, is set up from the eaves and is set below the main ridge line, it is a dormer roof extension above the two-storey projection. Thus, the proposed development should be considered under Class B of the GPDO which provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is PD.
9. Development is permitted by Class B subject to conditions.
Condition B.2 states: -
(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 -
 - (aa) the eaves of the original roof are maintained or reinstated.
 - (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.
10. I note that both parties have assessed the proposed development as an enlargement which joins the original roof to the roof of a rear or side extension and as such agree that it meets all the specified limitations and conditions of Class B of the GPDO.

11. Government guidance in relation to Class B is contained within the publication 'Permitted development rights for householders – Technical Guidance'¹ (TG). 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".
12. The proposed extension above the outrigger would mean that the existing original roof of the outrigger would be lost. In my view, the end wall of the proposed development above the outrigger would be joined to the rear dormer extension rather than the original roof – that is – it would be an extension which joins an extension. Thus, it would not join the original roof to the roof of a rear or side extension for the proposal to fall within the exception described in B.2(b)(i) and (ii). The eaves of the original roof would not be maintained or reinstated as required by condition B.2(b)(i)(aa). Also, the lower part of the proposed development would extend beyond the outside face of the rear elevation of the main dwelling (B.2(b)(ii)).
13. Consequently, the limitations and conditions of B.2(b)(i)(aa) and B.2(b)(ii) would not be met. Thus, although the additional height of the proposed development is no larger than the existing dormer window in the rear roof slope of the main house, is set up from the eaves and is set below the main ridge line, it would not be PD by virtue of Class B of the GPDO.
14. I acknowledge the submissions from both parties regarding whether the appeal development falls to be considered under Class B of the GPDO only or whether it should also be considered under Class A of the GPDO which deals with the "enlargement, improvement or other alteration of a dwellinghouse". For the purposes of completeness, I have considered whether the proposed development would be PD as set out in Class A of the GPDO and for the following reasons find that it does not.
15. The TG states that "when considering whether a development proposal is permitted development, all the relevant Parts of the rules and all the Classes within those Parts need to be taken into account."
16. In this case, the submitted plans show that the proposed development, albeit set up from the eaves and smaller than the rear dormer, would extend across the roof slope of the outrigger with the result that most of the existing outrigger roof would be lost. Moreover, although it would be below the ridge line of the main house, it would extend from the rear wall of the main house and would appear as a flat roof extension above the two-storey outrigger. As a matter of fact and degree, I consider that the proposed development would exceed what could reasonably be described as an 'addition' or 'enlargement' of the roof and would also amount to an enlargement of the dwellinghouse. Thus, in my view, the proposed development does fall to be considered under Class A of the GPDO.
17. The matter in contention is whether the proposed development complies with Paragraph A.1.(i), which states that development is not permitted by Class A if the enlarged part of the dwellinghouse would be within 2 metres of the

¹ Published by the Ministry for Housing, Communities and Local Government, September 2019.

- boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.
18. Having regard to the submitted plans it would appear that the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, with an eaves height which exceeds 3 metres. Thus, the proposed development would not be permitted by virtue of paragraph A.1.(i) of Class A of the GPDO.
19. The appellant has drawn my attention to two LDC applications² both of which were considered under Class B of the GPDO only. One of the LDCs³ concerned an 'L' shaped dormer, the other⁴ concerned development which joined the original roof to the roof of a proposed extension above an outrigger, a separate replacement rear dormer and rooflights on the front elevation. Thus, whilst these examples were considered under Class B of the GPDO only, they are for different developments which were assessed on the facts specific to each site and are not directly comparable with the appeal proposal before me.
20. I have also taken into account a number of appeal decisions⁵ that have been brought to my attention whereby the appellant argues that the proposals were considered against Class B of the GPDO only. It would appear that there is a difference in approach between Inspectors when considering whether these types of development fall to be considered under Class B of the GPDO only or whether they should be considered under Class A and Class B of the GPDO.
21. The appeal decision⁶ concerning the erection of a dormer roof extension and extension above a two storey back addition – that is a 'L shaped dormer' was found to be PD by virtue of Class B of the GPDO because the L shaped dormer was considered as one discrete operation and as such met the exception in B.2(b) – *an enlargement should join the original roof to the roof of a rear extension or side extension*. In the appeal before me, the rear dormer has already been built and thus cannot be considered together with the proposed development as 'one discrete operation'. Another of the appeal decisions⁷ concerned a rear dormer extension on the main roof slope of a dwellinghouse. Thus, I do not consider that these other developments mirror the proposal before me.
22. I acknowledge that one of the appeal decisions⁸ referred to by the appellant concerned a proposed 'extension over an existing rear addition linking the existing dormer extension to the new one' and appears like the appeal circumstances before me. The Inspector found that the proposal satisfied the exception set out in B.2(b)(i)(aa) and B.2(b)(ii), thus the conditions set out in B.2 did not apply and the proposal benefitted from permitted development rights. I have considered the Inspectors' findings and decision and acknowledge the importance of consistency in decision-making. I also note that it has been recognised in previous appeal decisions that there have been different approaches by different Inspectors on appeal regarding this matter. However, each application for a proposed development certificate needs to be

² Appellant's Appendix 2 Ref: 2018/3266 & Appellant's Appendix 3 Ref: 0012/59/LAW2.

³ Ref: 2018/3266.

⁴ Ref: 0012/59/LAW2.

⁵ Appellant's Appendix 4 - APP/N5660/X/18/3215721, Appendix 5 - APP/N5660/X/19/3226956 & Appendix 6 - APP/N5660/X/19/3234849.

⁶ Ref: App/N5660/X/18/3215721.

⁷ Ref: APP/N5660/X/18/3234849.

⁸ Ref: APP/N5660/X/19/3226956.

assessed on its particular facts and site-specific circumstances. I have determined this case having regard to the evidence submitted and, having regard to the proposed development and site, I have come to a different conclusion.

23. The Council considers that the proposed removal of a chimney would comply with Class G of the GPDO which permits the installation, alteration or replacement of a chimney on a dwellinghouse. I agree that the removal of the chimney would be PD under Class G.
24. On the evidence available to me and having regard to all other matters raised, I find that, as a matter of fact and degree, it has not been shown that on the balance of probabilities the proposed development would be PD falling within Class A or Class B of the GPDO.
25. 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 rear dormer loft conversion over back rigger 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.

Elizabeth Jones

INSPECTOR