
Appeal Decision

Site visit made on 23 November 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/N5090/X/21/3280496
13 Ryhope Road, London N11 1DR

- 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 in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Jeffrey Xie against the decision of the Council of the London Borough of Barnet.
- The application Ref 21/2984/192, dated 28 May 2021, was refused by notice dated 29 June 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 involving hip to gable, dormer to rear and roof lights to the front.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. The proposed development is described in the Council's decision notice as 'roof extension involving hip to gable, rear dormer window 2no front facing rooflights and new side gable window'. This differs slightly from that found in the application form, as set out in the banner heading above, but each is sufficient, when read with the plans accompanying the application, to describe the proposed development.
2. I have described the appeal in the first bullet point above as being against a 'refusal in part'. This is because the Council have actually issued a certificate, albeit one that purports to certify that the proposed development is 'unlawful'. However, the certificate issued does not appear to me to comply with the relevant statutory provisions. Section 192(2) of the 1990 Act provides that:

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the certificate would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
3. Section 192(3) of the Act goes on to describe what a certificate shall specify and describe. There is no scope under the section to issue a certificate describing what is not lawful; only what is. Where the Council are not satisfied as to the lawfulness of the proposed development on the relevant date, the correct course is to refuse the application.

Main Issue

4. The main issue between the parties is whether, because of the finishing materials to be used, the proposed development is permitted by reason of the provisions of the Town and Country Planning (Permitted Development) (England) Order 2015 (as amended) ("the Order") and whether the Council's decision to decline to describe that development as lawful in the certificate it issued was well-founded. A further main issue arose from my site visit, concerning the volumetric thresholds of the Order.

Reasons

Finishing materials

5. At the outset of the appeal, there was no dispute between the parties as to whether the general volumetric thresholds of the Order would be met. The issue that arises relates to the proposed finishing materials of the rear dormer window.
6. Permission is granted by article 3(1) of the Order for the classes of development described as permitted development in Schedule 2. Part 1 of that Schedule deals with development within the curtilage of a dwellinghouse, and enlargements by way of roof additions or alterations are dealt with in Classes B and C of that Part. It is contended by the Council that, although not prohibited by any aspect of paragraphs B.1 or C.1, the proposed development would fall foul of condition (a) of paragraph B.2.
7. That condition provides that *the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*. The relevant application drawing, no. JX-106, shows the faces of the proposed rear dormer as having a 'render finish (sic) to match existing'.
8. The reference to matching the 'existing' is obviously, as I saw from my site visit, referring to the facing walls of the dwellinghouse, which are mostly finished in render. Thus the appellant contends that the condition is met.
9. The Council contend otherwise, referring me to the Permitted development rights for householders: Technical Guidance document of September 2019, published by the (then) Ministry of Housing, Communities and Local Government. Quoting it in part, the Council enjoin me to consider its advice that:

the face and sides of a dormer window should be finished using materials that give a similar visual appearance to [the] existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape.

10. A fuller quote would repeat the preceding advice that:

This condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used

should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will [be] the most important consideration.

11. The advice quoted by the Council is then given as an example of this.
12. It appears to me that, notwithstanding the example given in the Technical Guidance (to which the Council refer as 'legislation'), if the draughtsperson of the Order wished to specify that the faces of a roof extension must be of a similar appearance to the existing roof – in this case, tiles – then she or he could have done so. Instead, the Order requires that the materials used must be of a similar appearance to those used in the construction of the exterior of the dwellinghouse. It is therefore appropriate to consider the dwellinghouse as a whole, and the works proposed, in order to reach a judgement about whether the materials will be of a similar appearance to those used in the existing exterior construction.
13. Taking the dwellinghouse as a whole, its predominant finished material is a white render. In terms of the wording of the Order, this render appears to be a material 'used in the construction' of the exterior of the dwellinghouse, carrying some weatherproofing function, rather than being a mere aesthetic decision to cover up any underlying brickwork or other construction material.
14. Although 'consisting of an addition or alteration to its roof', the permission conferred by Class B of Part 1 is for 'the enlargement of a dwellinghouse'. This is the purpose of what is proposed here. Although amounting to an enlargement of the current roof area, the effect of the proposed works is to add a further storey (at the rear) to the dwelling as a whole. The dormer extension would be set in slightly from the eaves, ridge and sides of the roof, but overall the effect of the works would be to turn what is appreciably a two-storey dwelling into a three-storey one.
15. Unlike a more traditional dormer window where the vast majority of the principal face is void with cheeks to either side, here the rear window is to be substantially surrounded by a facing material. Although described as a 'dormer', in reality the proposal is a substantial enlargement of the dwellinghouse that, by design, has vertical external walls.
16. The Technical Guidance stresses the desirability of an appearance that minimises visual impact and is sympathetic to the existing house. Whilst the value of the Technical Guidance as an aid to statutory construction may be debatable, I find the proposed approach to the finished exterior of the dormer, rendering it to match the existing exterior walls of the dwellinghouse, to be an honest one and thus sympathetic to the house. The facing walls of the dormer extension will not match the roof tiles but, given the expression of the relevant condition in the Order, it appears to me that a choice may reasonably be made between the two.
17. In this regard I conclude that the Council's decision to refuse (in part) to grant a certificate of lawful use or development was not well-founded because I am satisfied that the appearance of the proposed finishing materials would meet the relevant condition of the Order.

Volumetric thresholds

18. The appeal property was apparently constructed as a semi-detached house. At my site visit I observed that the house to which it is attached, no. 15, appeared to have been extended and subdivided into two dwellings, with front doors side by side. Without having seen the internal configuration, the external appearance of what was numbers 13 and 15 suggests they are now a terrace of three dwellinghouses.
19. The proposed volumetric increase to the roof resulting from the works would be by 49.65 cubic metres. Class B.1(d) of the Order provides that development is not permitted by that Class if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house, or 50 cubic metres in any other case. A 'terrace house' is then defined in Class I to mean a dwellinghouse situated in a row of 3 or more dwellinghouses used or designed for use as single dwellings, where, if it is at the end of a row, it shares a party wall with or adjoins a dwellinghouse which shares a party wall with or adjoins the dwellinghouse on either side.
20. The appellant does not deny that no. 15 has been extended and subdivided in the way suggested by its external appearance, but considers that, given the original design of the houses, no. 13 should still be considered a semi-detached house. However, given the definition in the Order, referring to a row of dwellinghouses 'used or designed' for use as single dwellings, it appears to me that no. 13 is now an end-terrace house to which the lesser volumetric threshold of 40 cubic metres applies.
21. The burden of proof lies on the appellant, to the standard of probability. My observations on site lead me to believe that no.s 13 and 15 are now a terrace of three dwellinghouses, and neither party has submitted evidence to persuade me otherwise. Because of that, the proposed works would not be permitted by Class B because they would exceed the relevant volumetric threshold of Class B.1(d). Although for different reasons from those given by the Council, I am therefore obliged to conclude that the Council's decision to refuse (in part) to grant a certificate of lawful use or development was well-founded.

Conclusion and Formal Decision

22. For these reasons I conclude that the Council's decision to refuse (in part) to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the Act as amended.
23. The appeal is dismissed.

Laura Renaudon

INSPECTOR