



Appeal Decision

by A Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2022

Appeal Ref: APP/T5720/X/21/3282477

58 Hogarth Crescent, Colliers Wood, London, SW19 2DW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Barije Nela against the decision of London Borough of Merton.
 - The application ref 21/P2438, dated 23 June 2021, was refused by notice dated 19 August 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 described as "erection of dormer in roof slope to create a loft conversion including the insertion of a window in the side elevation."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This case was originally identified as requiring a site visit but upon review it was considered that this may not be necessary. After giving the main parties an opportunity to comment, the procedure was changed and no site visit was undertaken. I have made my decision on an analysis of the submitted documents.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC was well founded taking account of the information that has been submitted. The onus of proof in LDC cases is upon the appellant and the standard of proof is on the balance of probabilities. The planning merits of the proposal are not relevant.

Reasons

4. The LDC proposes a dormer extension that would enable the use of the existing loft-space of the dwelling as an additional bedroom. Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) approves the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. There are limitations in paragraph B.1. which set out when development is not permitted by that class. The only dispute is whether paragraph B.1.(c) applies and that does not allow for such development where any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any

- existing roof slope which forms the principal elevation of the dwellinghouse and which fronts a highway.
5. The proposed dormer extension would be on the 'front' roofslope of the house. There is no dispute that this is therefore a 'principal' roof-slope and that the development would be beyond the plane of that roof-slope. The dispute can be narrowed down to whether that principal roof-slope fronts a highway.
 6. The document 'Permitted development rights for householders Technical Guidance' has been referred to me. This advises that the definition of "Highway" is a "public right of way such as a public road, public footpath and bridleway. For the purposes of the order it also includes unadopted streets or private ways."
 7. The appellant states that the extension would front towards a "parking lot". That parking area they say is for sole use by the residents of the cluster of dwellings that front towards it. Hogarth Crescent is clearly part of the highway and that lays to the eastern side of the dwelling. The footpath along the front of the property as shown on the base-map links up with other footpaths and roads. It links Hogarth Crescent with other roads and paths around the estate. That in my view provides a strong justification for considering that the path is part of a highway network whether it is adopted or not. Furthermore however, the Council also states that the footpath is an "adopted highway" and the appellant does not dispute that it is adopted.
 8. In my view therefore the proposed works would extend beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and which fronts a highway. As such the proposal would not be permitted development under Class B of the GPDO.
 9. I am not provided with all of the circumstances of the other cases referred to by the appellant. Furthermore, it is not for me in this decision to determine whether or not those decisions were or were not correctly made. On the basis of the submissions it appears on the balance of probabilities that the proposal requires planning permission and those other developments do not change the circumstances in this case.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "erection of dormer in roof slope to create a loft conversion including the insertion of a window in the side elevation" 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.

A Harwood

INSPECTOR