



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/E5330/X/21/3280371

114, Kingsdale Road, Plumstead, London, SE18 2DF

- 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 Mr Aaron Braithwaite against the decision of Royal Borough of Greenwich.
 - The application ref 21/1295/CP, dated 9 April 2021, was refused by notice dated 4 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 rear loft conversion with two Velux roof lights all materials to match existing.
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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. Neither objected.
3. The Council changed the description of development to "loft conversion with a hip to gable roof end, rear dormer window and two velux rooflights to front roof slope." 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 hip to gable loft conversion to a semi-detached house and all materials to match existing." 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.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

5. The appeal relates to a two-storey semi-detached property. The appellant contends that the proposed development would be granted planning permission under Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development (PD).
6. 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 -
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.
7. The principal point at issue is the Council's determination that the proposed rear dormer extension would not comply with paragraph B.2.(b)(i)(bb) of Part 1 of Schedule 2 of the GPDO because the proposed dormer would be set back 180mm from the eaves.
8. With reference to the submitted plan¹, the appellant contends that the Council has measured the proposed set back distance of the dormer from the rear elevation and not from the side or plan view. The 'proposed roof plan' section of the submitted plan indicates that the proposed dormer would be set back 250mm from the eaves. However, no measurement is indicated on the 'proposed side elevation' section. Moreover, elsewhere on the plan it is not clear whether the proposed dormer would be set back from the eaves or if it is set back, by what distance.
9. On the evidence available to me I find, as a matter of fact and degree, the submitted plan is not sufficiently precise and unambiguous to show that on the balance of probabilities, the proposed dormer would comply with paragraph B.2.(b)(i)(bb) the GPDO.

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 the proposed development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR

¹ Drawing Number Kingsdale 01/2021 AO1.