



Appeal Decision

Site visit made on 27 January 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2022

Appeal Ref: APP/X4725/X/21/3270593

6 Seckar Lane, Woolley, Wakefield WF4 2LE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Lee Wood against the decision of Wakefield Metropolitan District Council.
 - The application ref 20/02278/CPL, dated 21 October 2020, was refused in part by the Council by notice dated 22 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 described as 'Single storey rear extension, loft conversion, garage conversion and garden room/storage building extension'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development in the heading above is taken from the application form. However, the Council's decision notice describes it as 'Rear Dormer; Roof Windows; Juliet Balcony; Conversion of Garage into habitable room, and external alterations to existing dwelling. 2 No. Outbuildings'. The same wording appears on the appeal form.
3. The Council issued a split decision, allowing some elements of the application. In allowing those, it used the wording from the revised description. The only element it refused was the rear dormer. The appeal relates only to that refused element. Accordingly, I have considered the appeal on the basis that it seeks an LDC for a rear dormer, as shown on the submitted drawings.

Main Issue

4. The main issue is whether, at the time of the application, the proposed rear dormer was lawful. This depends on whether it was development permitted by Class B of Part 1 of Schedule 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the 'GPDO').

Reasons

5. Class B provides permitted development rights for the enlargement of a house consisting of an addition or alteration to its roof. The Council has considered whether or not the proposed dormer is permitted under this class, and there is no suggestion from either party that any other class applies. Limitations to the

provisions of Class B and various conditions are set out at B.1 and B.2, and it is common ground that the proposed dormer is compliant with most of these. The sole point of disagreement relates to B.1(d). This prohibits development under Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres (in the case of a detached house such as this).

6. Interpretation of Class B is provided at B.3, which states 'For the purposes of Class B 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not'. The GPDO also establishes that 'cubic content' means the cubic content of a structure or building measured externally.
7. Further assistance comes from *Permitted development rights for householders - Technical Guidance*. While not part of the legislation, this is produced by the Government to assist in interpreting it, and I attach weight to it accordingly. In relation to B.1(d) the Guidance advises that 'Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance'. It adds that '*Original roof space* will be that roof space in the *original building*'.
8. Thus, it is clear that any previous additions to the roof of the property need to be taken into account. It is also clear that the house has been very substantially extended in the past. The Council and the appellant have both sought to identify which part of the house is original and appear to be in broad agreement on the point. Unfortunately, details of the property in its original form are not available. To address this lack of definitive information, and for the purpose of assessing the proposal against Class B, the appellant has tried to work out the original roof volume of the property, using information gleaned from neighbouring properties and a plan from 1982 showing the footprint of the property. From this an attempt is made to establish whether the 50m³ limit would be exceeded.
9. There are, however, difficulties with the appellant's approach. First, there is nothing before me to show that comparisons with the neighbouring properties are valid. There is nothing in the current appearance of this row of dwellings to suggest that they were once of the same or a similar type. I have been provided with historic location plans of the site but, even in the earliest of these, the footprints of the properties are noticeably different.
10. Second, the appellant's calculations assume that the ridge and eaves heights of the original building were similar to those of the existing building. However, I can see no basis for such an assumption, particularly given the evidently substantial changes to the property.
11. Third, the calculations provided by the appellant are not clearly laid out or explained and are not possible to follow with any degree of certainty. Some figures used in the calculations appear to come from annotated drawings, but the source for others is not clear. Moreover, a note on a drawing that accompanies the calculations indicates that the proposed dormer would have a volume of 29m³, whereas the calculation uses a figure of 22.95m³. It is possible that one gives the internal volume and one the external volume, but that is not explained. Additional calculations provided by the appellant are appended to the Council's statement, but these are similarly difficult to follow,

and do not clearly show how the estimates of the volume of the existing and original dwelling have been arrived at.

12. Overall, the only clarity that emerges is that the proposed dormer would appear to have a volume of 29m^3 , measured externally. This is shown on a drawing in the appellant's evidence and is consistent with the Council's calculation. I am not, however, able to draw any conclusions about the extent (in terms of volume) to which the original roof space has already been increased, based on the appellant's evidence.
13. In the absence of any clear and detailed assessment, I have made a more general assessment of the likelihood of the 50m^3 figure for additions to the original roof space being exceeded. Since I have concluded that the proposed dormer would have a volume of 29m^3 , it cannot be permitted development if existing works have already increased the roof space of the original building by more than 21m^3 ($50\text{m}^3 - 29\text{m}^3$).
14. Yet it seems probable to me that the existing additions to the original roof materially exceed that figure. The appellant has provided annotated drawings of the property showing the footprint of the original building drawn over the existing floor plan. From this it can be seen that the footprint of the building has roughly doubled, even setting aside the conservatory. The additions have pitched roofs. It appears unlikely to me that such a substantial, pitched-roofed enlargement of the building would have resulted in additional roof space of no more than 21m^3 . By way of comparison, that would be significantly less than the volume of the dormer now proposed. On the balance of probability, therefore, the 21m^3 limit is likely to have been exceeded.
15. I appreciate that the Council has not produced any evidence to directly contradict the appellant's view. However, the burden of proof in relation to an LDC application falls on the appellant. In the absence of any clear evidence to show otherwise, I conclude, on the balance of probability, that the limitations set out at B.1(d) would be exceeded as a result of the proposed development. Accordingly, it is not development permitted by Class B of Part 1 of Schedule 2 of the GPDO.

Conclusion

16. For the reasons given above I conclude that the Council's refusal in part was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR