
Appeal Decision

Site visit made on 18 January 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/N5090/C/21/3272612

62 Bittacy Rise, London NW7 2HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Victor Kadiu against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 1 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a loft extension comprising a hip-to-gable and dormer window.
 - The requirements of the notice are
 1. Demolish hip to gable extension and the dormer window shown in Photograph 'A'.
 2. Restore the Land and the roof back to the state it was in prior to when the breach of control took place as shown in Plan 'A'.
 3. Remove any building materials arising from the demolition and alteration of the roof from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The ground (c) appeal

2. This ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal, the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that development has taken place but no explicit planning permission is required for the roof extension. This is because approval is given by the Town and Country Planning (General Permitted Development)(England) Order 2015, Schedule 2, Part 1, Class B (the GPDO).
3. The meaning of development is set out in section 55 of the Town and Country Planning Act 1990 (the Act) and includes in the definition of the word "development" the carrying out of "building, engineering, mining or other operations in, on, over or under land". Section 55(1A) states that for the purposes of the Act building operation includes "(d) other operations normally undertaken by a person carrying on business as a builder". Section 57(i) states that subject to the provisions of the section, planning permission is required for the carrying out of any development of land.

4. The appellant accepts that operational development has taken place and relies on Class B of the GPDO. This states that the enlargement of a dwelling consisting of an addition or alteration to its roof is permitted development (PD), subject to various criteria. In particular, the size of the extension is limited to no more than 50 cubic metres and the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2metres from the eaves. This is measured along the roof slope from the outside edge of the eaves.
5. The appeal building comprises a semi-detached bungalow. In its original form it had a hipped roof and a half width, rear projection with a hipped roof connected to the main roof. The Council's photograph F showed that the main roof was enlarged with the addition of an extension and a change in shape from the hip to a gable end *before* (my emphasis) the erection of an infill, single storey extension. The change in the shape of the roof also led to the removal of the hipped roof over the rear projection.
6. The planning history of the site is set out in the Officer's report. Just before planning permission was granted for the infill, single storey extension on the 20 July 2018 (Reference 18/3164/HSE) a site inspection on the 16 July 2018 revealed that the roof extension had been built. As such, at this point in time *both* (my emphasis) of the limitations in Class B referred to above apply.
7. The appellant submits calculations and a new "As built" drawing to show that the cubic volume of the roof extension is 49.91 metres; that is, less than the limit of 50 cubic metres set out in Class B. He states previously submitted plans were drawn by a structural engineer who was in training and that the dimensions on those drawings were incorrect.
8. The Council state "Measurements taken" by them for the post development application (Reference 20/5582/HSE) and the lawful development certificate application (Reference 18/4710/191) revealed only slight differences in their calculations. Namely, the volume of the roof extension exceeded the 50 cubic metre limit in both applications.
9. However, it is not clear from the Council's submissions whether "Measurements taken" means measurements taken on site or whether the Council took measurements from the drawings to calculate the volume of the extension. Either way, the onus is on the appellant to demonstrate that the proposal meets the size limitations set out in Class B.
10. Notwithstanding these submissions, I find that the second limitation has not been met with regard to the 0.2 metre set back of the roof extension from the eaves. The appellant's "As built" drawing "Existing side elevation (From attached end)" is annotated "Rear dormer set back at least 20cm above eaves" and shows the front face of the extension set back from an area of sloping tiles.
11. However, at my site visit I saw that this is not the case. There are no sloping tiles and the front face of the extension has been positioned at right angles to the flat roof of the infill extension and the new flat roof of the existing rear projection. Any trace of the rear roof slope, and therefore the eaves, has disappeared, especially as the enlargement extends the full width of the property. As well as meeting the size limitation, the extension should have

been set back from the eaves when it was built in order to have benefitted from the planning permission given by Class B.

12. It appears from all the drawings that this was never the appellant's intention. This is because the front face of the roof extension is built on "beam 4", which was inserted to support the roof prior to the removal of the original rear wall of the property to form the open plan lounge/diner/kitchen. These living spaces occupy the area provided by the existing rear projection and the infill extension.
13. Therefore, for the above reasons I conclude that the roof extension is not PD as set out in Class B of the GPDO. Even if an agreement had been reached between the parties regarding a measurement for the volume of the extension being less than 50 cubic metres, the position of the roof extension in relation to the eaves means that it is not PD. The operational development therefore constitutes a breach of planning control and the appeal on ground (c) fails.

Conclusion

14. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR