The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/Z5630/X/21/3287688
26 Burlington Road, New Malden, London KT3 4NY

- 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 Freda Ahmed against the decision of Royal Borough of Kingston Upon Thames.
- The application, ref 21/02231/CPU, dated 3 August 2021, was refused by notice dated 26 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 a hip to gable conversion, rear dormer loft extension and two roof lights to the front of the property.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal as originally made was not accompanied, as required[1], by copies of the submitted plans. These were eventually forwarded at my request and the Council confirmed, as the drawing numbers were not listed on the decision notice, that these were the plans considered by them.

3. No site visit has been carried out. All the information needed is now included with the application and appeal documents and so a decision can be reached on the papers.[2]

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the roof extension was well-founded.

Reasons

5. The appeal site comprises a semi-detached two storey dwelling. The property has been extended in the past with a single storey side and rear extension and a first floor extension.[3]

[1] Planning Practice Guidance: Appeal a decision about a lawful development certificate – Documents you must provide – All plans, drawings, documents you sent to the local planning authority.

[2] The Procedural Guide - Certificate of lawful use or development appeals – England, updated 13 October 2021, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit."

[3] The Council describe this as a two storey extension; third party photographs show new brickwork at first floor level and that, as originally built, there was a gap at this point.

6. The shape of the main roof is hipped but at the rear there is a catslide element over a two storey ¾ width projection. At first floor level the rear projection appears to be used as a bedroom. At some point in the past the width of the rear projection at first floor level has been enlarged so that the side wall is now aligned with the main side wall of the building.

7. The appellant now proposes to change the shape of the main roof to a gable end and to add a dormer across almost the full width of the roof. The shape of the dormer would be stepped in order to achieve the necessary head height over the staircase and to work with the existing roof slope, which incorporates a catslide. It would spring from just below the main roof ridge before stepping down, with the main part of the dormer extending from the catslide roof element.

8. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

9. Applying the terms of section 192(2) of the 1990 Act to the appeal proposal, the Council has determined the application for the roof extension and roof lights against the provisions set out in Schedule 2, Part 1, Classes B[4] and C[5]of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

10. However, this was on the basis that the property is in use as a C3 dwelling house,[6] as stated on the application form. Neighbouring occupiers submit that this is not the case though, and that the property is occupied by up to ten people as a large house in multiple occupation. A shed, approximately 7m x 3m in size, at the bottom of the garden seemingly has also been converted into living accommodation with water, sewerage and electricity supplies. Whether this is on a self-contained basis is not clear.

11. The extract from the Ordnance Survey shows that there is a building at the bottom of the garden but the appellant does not show this on the application drawings. The drawings do, though, appear to show that the property includes a flat. The ground floor plan shows two separate entrance doors from the street with one leading to what appears to be a self-contained unit within the rear extension of the property.

12. It is not a condition of qualifying for Part 1 permitted development (PD) rights that a "dwellinghouse" is of a particular type or used in accordance with Use Class C3. However, to benefit from PD rights, Article 2(1) of the GPDO defines a dwellinghouse as a building which does *not* (my emphasis) contain one or more flats.

13. The appellant and the Council make no comment on these submissions from third parties, and it is not clear from the Council's Officer report whether a site

[4] Class B The enlargement of a dwelling house consisting of an addition or alteration to its roof
[5] Class C Any other alterations to the roof of a dwelling house
[6] Town and Country Planning (Use Classes) Order 1987 as amended, Use Class C3 Dwellinghouses: This class is formed of three parts, namely, use as a dwellinghouse by a single person or a family; use by up to six people living together as a single household and receiving care or use by up to six people living together as a single household that do not fall within the Use Class House in Multiple Occupation definition.

inspection took place to ascertain the use of the property before the determination of the application. Nevertheless, the onus of proof is on the appellant to make their case that the property qualifies for PD rights. The Planning Practice Guidance emphasises repeatedly that applications for LDCs need to describe precisely what is being applied for and the land to which the application relates. It appears that the drawings have not been prepared with this guidance in mind. Proposals also need to be described with sufficient clarity to enable a local planning authority to understand exactly what is involved.

14. Notwithstanding that PD rights may not apply; I see no reason to take a different view from the Council on the roof lights. They found that the roof lights complied with the listed criteria against Class C of the GPDO.

15. However, I find that the appellant's calculations for the extension fail to demonstrate how the figures are derived for the sums set out in the grounds of appeal. The accompanying plans contain no stated dimensions to show, for example, that the figure of 5m used in the sums refers to the width of the dormer. The drawings also include the words "All dimensions approximate, do not scale from drawings" so in this situation, and to demonstrate lawfulness, dimensions should have been shown so that the appellant's calculations could be verified. Whilst the proposed plan states the existing, proposed and additional volume figures for the loft, it also states that these figures are approximate but I consider that they should be precise in order to demonstrate lawfulness.

16. The drawings also fail to show the dimensions of the earlier first floor roof extension, which extends the width of the rear projection. As this is not part of the original dwellinghouse, the volume of this area should be deducted from the PD allowance of 50 cubic metres. The appellant has not included this calculation in the sums set out in their grounds of appeal and, as such, there is doubt as to whether the proposed extension, amounting to 43.8 cubic metres, as stated by the appellant, would be lawful.

17. Finally, there is a discrepancy within the drawings and an incorrect reference to roofing materials.[7] The proposed front elevation fails to show the proposed change from a hip to a gable end and the photographs dated January 2022 from third parties show that the main roof is covered in slate.

18. Class B.2(a) states that development is permitted by Class B on the basis 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 building.

19. The Ministry of Housing, Communities and Local Government document "Permitted development rights for householders - technical guidance" September 2019 has been produced to help householders understand their rights. Page 35 explains that the condition set out in Class B.2(a) is intended to ensure that any addition 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.

[7] On drawing No 21129_405 Proposed elevations LDC it is stated "Loft extension in clay vertical tiles to tie in with existing roof".

20. In this case it is considered that the use of clay tiles would not be of a similar profile and visual appearance to slate and would fail to minimise the visual impact of the dormer extension. As such, the development would not accord with the conditions set out in Class B.2(a) of the GPDO.

21. To summarise, the appellant's appeal is confined to establishing the lawfulness or otherwise of the proposed development based on the description of the development and the information shown on the drawings. Firstly, I find that it has not been demonstrated, with sufficient clarity, that the property qualifies for PD rights, due to what is shown on the plans and what has been submitted by third parties. Secondly, the appellant fails to show, with sufficient precision, that the PD limit, if it is in play, set out in Schedule 2, Part 1, Class B.1(d)(ii), would not be exceeded. Thirdly, the appellant fails to show that the development accords with the condition set out in Class B.2(a). Finally, the drawings are inaccurate in part. Therefore, on the evidence before me I am not satisfied that lawfulness has been established.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a hip to gable conversion, rear dormer loft extension and two roof lights to the front of the property 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.

D Fleming

INSPECTOR