
Appeal Decision

Site visit made on 29 March 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2022

Appeal Ref: APP/T5150/X/20/3255673
167 Vivian Avenue, Wembley HA9 6RW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Z Zany against the decision of the Council of the London Borough of Brent.
- The application Ref 20/1526, dated 6 May 2020, was refused by notice dated 24 June 2020.
- 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 construction of rear dormer.

Summary Decision: The appeal is dismissed.

Background and Preliminary Matters

1. I note that a rear dormer has been constructed on the property and does not include the Juliet balcony or patio style doors shown on the submitted drawings. For clarity, my decision is based on the details of the rear dormer submitted with the application. I need to consider whether the development would have been lawful if begun on the date of application, being 6 May 2020 (the relevant date). I understand that was before work began on the dormer, such that it was then a proposed development.
2. The appellant suggests that the rear dormer was proposed to be constructed in accordance with the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), known as 'permitted development'. However, the Council refused the application as they allege that the property does not have rights under the GPDO as a previous rear extension does not have planning permission and is unlawful.
3. There is no dispute that the roof extension complies with the requirements of Class B, Part 1, Schedule 2 of the GPDO. The main issue is whether the Council's decision was well-founded taking account of the previous rear extension.

Reasons

4. The previous rear extension is at ground floor level. I understand that it was subject of an application for prior approval and that the Council responded that such approval was not required. It was constructed and the Council state that

the height is greater than permitted by Class A(i), Part 1, Schedule 2 of the GPDO such that it does not comply with the requirements of that class and is, therefore, unlawful. They suggest this is because the height of the eaves of the enlarged part of the dwellinghouse exceeds 3m in height and is within 2m of the boundary of the curtilage.

5. Article 3 of the GPDO sets out that planning permission is granted for the forms of development at Schedule 2 of the GPDO. Paragraph 3(5) states that this permission does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Consequently, where there are unlawful elements to the existing building, the rights granted by Article 3 and Schedule 2 of the GPDO do not apply. In these circumstances the GPDO does not grant planning permission for further extensions.
6. In this case, the Council state that the existing ground floor rear extension is unlawful. If that is the case, no further extensions, including the dormer proposed, would be permitted.
7. The appellant indicates that the Council's conclusion that prior approval was not required for the earlier extension means that they had confirmed planning permission was granted for it by the GPDO. Class A.4(7) provides that prior approval is required where any owner or occupier of adjoining premises objects and, in that event, the Council must consider any impact on amenity. Presumably, the Council did not receive any objections from neighbouring owners or occupiers. As a result, they notified the appellant that prior approval was not required.
8. I note that the condition at Class A.4(3) states that the Council may refuse an application where the development did not comply with the restrictions set out in Class A, Part 1, Schedule 2 of the GPDO. However, whilst the Council would be bound to consider whether development falls within the requirements of that class of permitted development, confirmation that prior approval was not required does not confer planning permission for development outside that class. Furthermore, the appropriate mechanism for determining whether something was or would be permitted development is an application for an LDC.
9. So, notwithstanding the Council's confirmation that prior approval was not required, the ground floor extension did not meet the terms of Class A, Part 1, Schedule 2 of the GPDO so does not have planning permission. It is, therefore, unlawful.
10. For these reasons, I conclude that the Council's decision was well-founded so I will dismiss the appeal.

Decision

11. The appeal is dismissed.

AJ Steen

INSPECTOR