The Planning Inspectorate

Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2022

Appeal Ref: APP/Q4625/X/22/3290437
44 Milverton Road, Knowle, Solihull B93 0HY

- 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 & Mrs Michael & Sarah Allsop against the decision of Solihull Metropolitan Borough Council.
- The application ref PL/2021/01380/CLOPUD, dated 14 May 2021, was refused by notice dated 27 October 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 the erection of a rear box dormer, the conversion of an existing hipped roof to a gable end and the addition of a front roof light.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers[1].

3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the council is provided with information satisfying it 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. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

5. This is whether the decision not to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development under Article 3 and

[1] The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, 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." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

6. 44 Milverton Road is a two storey semi-detached property in use as a single dwellinghouse. The development for which an LDC is sought comprises a hip to gable roof extension with a rear dormer and the addition of a rooflight on the front roof slope. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted by Class B, Part 1, Schedule 2, Article 3 of the GPDO, subject to the restrictions set out in B.1 and conditions at B.2.

7. Although not clearly stated in the reason for refusal of the LDC application, the officer report and correspondence between the appellant and the council indicate that the council also considers that the additional roof volume created by the previous single storey extensions, should be combined to the proposed increase in the volume of the roof additions and that this would further exceed the limitations as set out in Class B.

8. Interpretation guidance is set out in B.3 of the GPDO and advises that 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 Technical Guidance published by the Ministry of Housing, Communities and Local Government (2019) to accompany the GPDO and assist in interpreting householder permitted development rights, includes clarification stating that when calculating any additional roof space created by a roof extension, any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. It also makes it clear that the 'original roof space' is the roof space in the 'original building'.

9. Considering the guidance and interpretation set out above, the existing roof of the single storey extension, which is not connected to the roof space of the original building, cannot be considered to be a previous enlargement to the original roof space of the appeal property. From the evidence before me, the hip to gable extension and rear dormer for which the LDC is sought are the only enlargements to the original roof space of the appeal property.

10. Nevertheless, it remains in dispute that the total volume that would be created by the proposed development, the subject of this appeal, would exceed 50 cubic metres and consequently conflict with Class B.1 (d)(ii) of the GPDO. Therefore, the proposal would not constitute permitted development under Schedule 2, Part 1, Class B of the GPDO. In addition to the drawings which form part of the LDC application, the appellant provided 'model views' and calculations for the proposal. While there seems to be no disagreement regarding the measurements for the proposed dormer, there is conflict between the parties concerning the hip to gable extension where the argument centres around the inclusion of the eaves within the calculations of the volume that would be created.

11. The Technical Guidance aids in this matter, stating that "the enlarged part of the roof must not extend beyond the outer face of any wall of the original house if it is to qualify as permitted development, unless it joins the original roof to the roof of a rear or side extension. An interpretative provision at paragraph B.4 of Class B clarifies that for these purposes any roof tiles,

guttering, fascias, barge boards or other minor roof details which overhang the outer face of the wall should not be considered part of the roof enlargement." Therefore, in these circumstances, the roof overhang is no more than is necessary and I consider it should be discounted for the purposes of applying limitations of cubic capacity. Accordingly, the calculations which have been provided by the appellant, demonstrate that the proposal would create less than 50 cubic metres of external volume and thereby comply with the cubic capacity limitations within Class B of the GPDO.

12. However, and notwithstanding this, development is permitted by Class B subject to the following condition – B.2(a) the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. This condition is intended to ensure that any addition or alteration to a roof results in an appearance that minimises visual impact and is sympathetic to the existing house. The Technical Guidance interprets this as 'the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house… materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape.'

13. While I note the proposed materials for the dormer would match that of the existing house, and although it is the appellants' intention to amend this through the submission of a planning application, the fenestration is substantially different to the existing house in terms of overall shape and size. In this respect, the proposal would not comply with condition B.2(a).

14. Furthermore, condition B.2(c) requires that any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse shall be - (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. In the absence of details regarding the new opening in the gable end, I cannot be sure that the proposal would comply with this condition.

Conclusion

15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a rear box dormer, the conversion of an existing hipped roof to a gable end and the addition of a front roof light was well-founded, albeit not for the reasons given, and the appeal should not succeed. I will exercise the powers transferred to me under section 195 (3) of the 1990 Act as amended.

S A Hanson

INSPECTOR