



Appeal Decision

Site visit made on 17 May 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/T5150/X/22/3291277
92 The Avenue, London NW6 7NN

- 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 Ms C Scott Knight against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/3928, dated 13 October 2021, was refused by notice dated 15 December 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 "dormer loft extension in materials matching the existing dwelling".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. The site visit procedure was altered from an accompanied site visit to an access required site visit, as the Council Officer was not present when I arrived at the appeal site during the pre-arranged time and date. Both parties were subsequently written to explaining the change in procedure. As such the appeal will be determined on this basis.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed dormer loft extension would be granted planning permission by Article 3, Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

5. Subject to limitations and conditions, Class B of Schedule 2, Part 1 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, and Class C of Schedule 2, Part 1 of the GPDO permits other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the proposed dormer loft extension, including side rooflight, would be granted permission by virtue of Class B and C. Paragraph B.1 and B.2, and C.1 and C.2 sets out the limitations and conditions which proposals must adhere to benefit from permitted development rights.
6. There is no dispute between the parties that the development falls to be considered under Classes B and C. Nor is there any dispute that the development would adhere to the limitations set out at paragraph B.1 (a) through to (f), the conditions set out at paragraph B.2 (b) through to (c) and the limitations and conditions set out at paragraphs C.1 and C.2. I have found no reason to disagree with these findings.
7. The Council determined that the proposed dormer loft extension, finished in render to match the house fails to meet part B.2 (a) of Schedule 2, Part 1, Class B of GPDO. Paragraph B.2(a) states that "development is permitted by Class B subject to the following conditions (a) 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 dwellinghouse." The wording of this condition uses terms which will inevitably lead to interpretation in many cases because it is unlikely that any dwelling will be constructed uniformly of the same material. The expression "similar appearance" requires a fact and degree judgement taking account the appearance of the existing materials of the dwellinghouse.
8. The appeal site is semi-detached dwelling, and the external materials comprise a mixture of brickwork and pebble dash render at the front of the property, together with white rendered walls to the side and rear of the property. The roof is made up of reddish brown roof tiles. There is also brickwork on the ground floor side garage. The proposal would involve a new wraparound side and rear dormer finished in render to match the house. Since white render forms part of the existing walls of the dwelling the appellant contends that this material which is proposed for the dormer roof extension complies with condition B.2 (a) above.
9. The Council's Officer's Report, quotes guidance from the Government's Technical Guidance (TG)¹ which provides a useful guide to interpretation of the GPDO. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for condition B.2(a) it states:

"This condition is intended to ensure that any addition or alteration 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. The visual impacts of the materials used will be the most important consideration. For example:...

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

- *the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house. So the 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."*
10. This explains the intended purpose of the condition and clearly describes the situation as proposed here, in so far as it indicates that the materials used for a dormer should appear to be of a similar colour and design to the materials used in the main roof. Therefore, the Council is correct to say that the white render finish is not of a similar appearance in colour and design to the reddish/brown tiled main roof. I note that the TG is guidance rather than statute, but it has been expressly prepared to give an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances.
11. I note that there are a variety of roof materials used for loft extensions on neighbouring properties. However, the GPDO does not require an assessment of roof materials found elsewhere in the local area, and as set out earlier, planning merits are of no relevance to this appeal for an LDC. TG offers guidance that is of direct relevance to this case. It is intended as an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO. Where the TG clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case.
12. As a matter of fact and degree, the proposal fails to comply with condition B.2 (a) of Schedule 2, Part 1, Class B of the GPDO. For this reason, express planning permission is required for the extension.

Conclusion

13. The development is not one that complies with all of the conditions of Article 3, Schedule 2, Part 1, Class B respectively of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the dormer loft extension 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.

R Satheesan

INSPECTOR