



Appeal Decision

Site visit made on 26 July 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5TH AUGUST 2022

Appeal Ref: APP/N1920/X/21/3283360

The Gables, Barnet Road, Potters Bar EN6 2SJ

- 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 Tagbo Umenyilora against the decision of Hertsmere Borough Council.
 - The application ref 21/0905/CLP, dated 26 April 2021, was refused by notice dated 2 September 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 single storey side extensions, loft conversion.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council's refusal to grant an LDC in respect of the proposal was well-founded. This turns on whether the appellant has shown that, on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class A and Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. The Gables is a substantial two storey detached dwelling standing in a generously-sized plot. The drawings accompanying the application show a proposed single storey flat roof extension attached to the north-east side of the dwelling. This extension would also protrude beyond the rear elevation of the dwelling, running alongside but not attached to an unbuilt single storey rear extension which the Council determined did not require prior approval in January 2019¹. A proposed single storey flat roof rear extension, which would run alongside but not be attached to the other side of the 'prior approval' extension, is also shown. Additionally, the application drawings show a proposed flat roof dormer which would span the rear roof slopes of the dwelling.
4. The GPDO at Article 3, Schedule 2, Part 1, Class A grants planning permission for the enlargement, improvement or other alteration of a dwelling, subject to the limitations in paragraphs A.1 and A.2 together with the conditions in

¹ Council Ref: 18/2342/PD42.

paragraphs A.3 and A.4 being met. The side-to-rear and rear extensions would both protrude 8 m beyond the rear wall of the original dwelling. The depth of the extensions therefore exceeds the 4 m limit for single storey extensions to a detached dwelling in paragraph A.1 (f)(i) of Class A. The Government's Technical Guidance (TG)², which aids the interpretation of the GPDO, advises that extensions on a side wall of a dwelling and extending beyond a rear wall but not attached to a rear wall are subject to the restrictions applying to both rear walls and side walls.

5. The dwelling is not on Article 2(3) land nor on a site of special scientific interest. Neither extension would protrude more than 8 m from the rear elevation of the original dwelling. Accordingly, the depth of the extensions falls within the limits of paragraph A.1(g). However, such extensions must satisfy the conditions in paragraph A.4. This is confirmed in the TG, which goes on to summarise the prior approval procedure set out in that paragraph; development cannot commence until the Council notifies the applicant that no prior approval is required, or gives prior approval, or 42 days have passed without any decision. There is nothing before me to indicate that the conditions in paragraph A.4 have been satisfied in this instance.
6. Furthermore, the dwelling has previously been enlarged at two storeys on its south-west side, following the granting of permission in the early 1980s³. The parties do not dispute that the existing enlargement measures 6.1 m wide, whilst according to the appellant the original dwelling measures 10.7 m wide. There is no sound reason to question the accuracy of the above dimensions. The rear extension would be attached to the existing enlargement.
7. The width of the rear extension is intended to meet the limitation in paragraph A.1(j)(iii). Nevertheless, the limitation at paragraph A.1(j)(a) applies where any total enlargement (being the enlarged part together with any existing enlargement of the original dwelling to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j). Given that the existing enlargement is already more than half the width of the original dwelling, the limitation in paragraph A.1(j)(a) cannot be met, irrespective of the width of the rear extension. The TG makes it clear that where a proposed extension is to be joined to an existing extension, whether that was built following a planning application or under permitted development rights, it is the total enlargement that must meet the limitations set out in paragraph A.1(e) to (j). Consequently, the rear extension cannot benefit from the planning permission granted by Class A in any event.
8. The GPDO at Article 3, Schedule 2, Part 1, Class B grants permission for enlarging a dwelling consisting of an addition or alteration to its roof where the relevant limitations in paragraph B.1 and the conditions in paragraph B.2 are met. To meet the limitation in paragraph B.1(d)(ii), the proposed rear dormer must have a volume that would not increase the cubic content of the original roof space of the dwelling by more than 50 m³. The TG explains that the 'original roof space' will be the roof space of the 'original building', i.e., that of the building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.

² Permitted development rights for householders: Technical Guidance MHCLG September 2019.

³ Council Ref: TP/83/0017.

9. The appellant calculated the rear dormer as having a total volume of just under 50 m³. However, the existing enlargement includes a hipped, pitched roof element. As the existing enlargement is a later addition to the dwelling, its roof cannot form part of the original roof space. The appellant's calculations fail to take account of the volume of the roof space in the existing enlargement. Although no details were provided, it is probable that the existing enlargement's roof space has a substantial volume. Accordingly, the rear dormer would increase the total cubic content of the dwelling's original roof space by greater than 50 m³, exceeding the limitation in paragraph B.1(d)(ii). It follows that the rear dormer cannot benefit from the planning permission granted by Class B.
10. Consequently, on the balance of probability the appellant has been unable to show that the proposal would benefit from the planning permission granted by the GPDO at Article 3, Schedule 2, Part 1 in Classes A and B. In the absence of a grant of express planning permission, development which exceeds the limitations and conditions of the GPDO is not lawful for planning purposes.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of single storey side extensions and a loft conversion 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.

Stephen Hawkins

INSPECTOR