



Appeal Decision

Site visit made on 3 August 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2022

Appeal: APP/W5780/X/21/3267363

41 Tendring Way, Chadwell Heath, Romford RM6 5DX

- 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 lawful development certificate (LDC).
 - The appeal is made by Mr Andrei Ciobanu against the decision of the London Borough of Redbridge.
 - The application Ref 3512/20, was dated 23 October 2020, was refused by notice dated 29 October 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 lawful development certificate is sought is loft conversion with side dormer and side skylights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. My decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
3. It should be borne in mind that previous Council or Inspector decisions do not constitute case law. That said, the findings and approach to a particular matter may be material and there is a need for consistency in the planning process. However, I am not bound to reach the same conclusions as previous decision makers provided there are sound planning reasons for departing from a previous decision. I must evaluate the evidence presented in relation to this particular proposal and site.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Classes B and C, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

5. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if

on application under this 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.

6. Based on the evidence before me, the sole point in dispute between the parties relates to whether any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. To reach my decision on this matter I have had regard to the provisions of Class B of the GPDO and the submitted evidence.
7. There is only one principal elevation on a house. Given the property's location on a corner plot, it is therefore a matter of judgment as to which one of the appeal property's elevations is the principal elevation. Having regard to the technical guidance for Permitted Development Rights (September 2019) and its definition of 'principal elevation', Tendering Way sets the postcode for the property and provides vehicular access. The elevation facing Tendering Way also contains the main architectural features, with the gable elevation containing three windows on the ground floor and three windows on the first floor. The Donald Drive elevation contains a porch and three first floor windows. Pedestrian access to the dwelling is also taken from Donald Drive, but its ground floor does not contain any further openings. I recognise that a dormer window has been added to the Donald Drive roof plane since the Council refused the application subject to this appeal¹, but I consider the principal elevation of the appeal property is that which faces Tendering Way.
8. As a result, the section of the property's roof next to the front gable elevation and the front roof slope of 39 Tendering Way is the existing roof plane that forms the principal elevation of the dwellinghouse. Given that a cheek of the proposed dormer roof extension fronts a highway and would extend beyond the existing roof slope, it would not accord with Class B.1(c) of the GPDO.
9. The intended purpose of the works is to create a room in the loft. To achieve this, the dormer roof extension is required to facilitate access from the first floor of the property and to provide the desired space and head height to make the room usable. The roof lights proposed would serve the loft room. Although the Council consider the roof lights would be development which is permitted by Class C of the GPDO, as the intended purpose for the roof lights would not be functionally severable from the dormer roof extension and loft conversion, I am, on this occasion, unable to issue a split decision.
10. My attention has been drawn to a scheme at 32 Rochford Avenue by the appellant. This property is within the same borough and the Council granted a LDC for a loft conversion with rear dormer and two front roof lights. This development has now been carried out. Although the physical configuration of No. 32 is broadly the same as the appeal property, the plans confirm that the front elevation of No. 32 faces Ongar Close, with the side elevation fronting Rochford Avenue. Whereas the plans submitted in respect of this appeal state that the front elevation faces Tendering Way, and the side elevation fronts Donald Drive. This is the opposite of the scheme at No. 32. As such, there would appear to be an inconsistency in the Council's approach. However, as I have explained, I am not bound by its previous decision to issue a LDC for a

¹ Appendix 1, Council Statement

similar development. Based on the evidence, I am satisfied that the proposal does not accord with the limitation set out in paragraph B.1(c).

11. Thus, for the reasons given above, I find on the balance of probabilities that the proposed dormer roof extension and roof lights would be development which is not permitted by Classes B and C of the GPDO.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate in respect of a loft conversion with side dormer and side skylights was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR