



Appeal Decision

Site visit made on 8 August 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 September 2022

Appeal Ref: APP/G5750/X/21/3273204

152 Sheringham Avenue, Manor Park, London E12 5PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mohim Uddin against the decision of London Borough of Newham.
- The application Ref: 20/02907/CLP, dated 9 December 2020, was refused by notice dated 22 February 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 'the proposed loft conversion falls under permitted development as the volume of loft is under 40 cumt, no part of the loft proposed is higher than the highest point in existing roof, proposed loft tiles match existing roof tiles, there is 25 cm setback to the loft.'

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's statement and drawings refer to the application being for a 'certificate of lawfulness for proposed use'. However, having regard to the submitted evidence, it is clear that the proposal relates to operations proposed to be carried out in, on, over or under land. As such, I have taken the application to have been made under section 192(1)(b) of the Act as amended.
3. The description of development for which the LDC is sought set out in the heading above is taken from the application form. However, the description used by the Council in the decision notice and by the appellant in the appeal form is 'proposed construction of a rear and side dormer extension.' I consider this to be a more accurate and concise description and have determined the appeal on this basis.
4. I am satisfied that neither of the corrections set out in paragraphs 1 and 2 of this Decision cause injustice.

Main Issue

5. The main issue is whether the Council's refusal to grant the LDC was well founded.

Reasons

6. The LDC seeks to establish whether the proposed development would have been lawful on the date of the application. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant.
7. The main thrust of the appellant's case is that as the proposed rear and side dormer extension would be under 40 cubic metres, no higher than the highest point of the existing roof, constructed in matching materials, and have a 25cm set back, it would be permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, (as amended) (the GPDO).
8. 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. Additionally, Class C of Schedule 2, Part 1 of the GPDO permits other alterations to the roof of a dwellinghouse. Both Classes are subject to limitations and conditions.
9. The application was refused on the basis that the submitted drawings are not sufficiently accurate to allow a full and proper understanding of the proposed development and whether, at the time of the application, it would have complied with the relevant conditions, limitations or restrictions set out in the GPDO.
10. The appeal property is a mid-terrace, two-storey dwelling with a lower two-storey gabled outrigger at the rear. The submitted drawings comprise Drawing No 545/01 – Existing and Proposed Floor Plans and Elevations, Volume, and Site Plan; and Drawing Number: 545/02 – Existing and Proposed Side Elevations.
11. In assessing the proposed development solely on the basis of the submitted drawings and associated calculations, it could be concluded that, at the time of the application, the proposal would have complied with the limitations and conditions of Classes B and C of Schedule 2, Part 1 of the GPDO.
12. Particularly, it would have complied with the limitation of Class B.1, section (d)(i), in that the estimated cubic content of the resulting roof space of 38.41 cubic metres would not exceed the cubic content of the original roof space by more than 40 cubic metres.
13. However, on closer inspection and specifically when comparing them to the existing dwelling on site, it is evident that the drawings of the property exhibit a number of ambiguities and discrepancies. These include the positions and dimensions of the windows on the main house and outrigger; the position of the connection of the outrigger with the main roof; and the width of the outrigger. As a result, they bring the precision of any proposed development shown on them, as well as the accuracy and validity of any associated calculations, into question.
14. From the evidence before me and my observations on site, I am not satisfied that the submitted drawings are sufficiently precise or unambiguous. On this basis, I am not convinced that they can be relied upon to confirm that the proposed development would have been lawful on the date of the application. Particularly, that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 40 cubic metres, given that the submitted estimate is already near the maximum threshold.

15. I note the appellant's assertion that the exact position of the connection of the outrigger with the main roof can only be obtained if someone climbs onto the roof to measure it. Nevertheless, in an appeal such as this, the onus is on the appellant to provide all the relevant information and evidence to support their case.
16. I have had regard to the appellant's comments that the drawings have been prepared as per the site survey and are correct; that were the appellant to increase the width of the outrigger in line with the Council's comments, it would not match the room size on site; and that the Council did not undertake a site visit to ascertain the reality on site. Nevertheless, in comparing the submitted drawings and the existing property when on site, it is evident that they possess a number of uncertainties and inconsistencies.
17. Taking all of the above into account, the submitted drawings are not sufficiently precise or unambiguous. Therefore, on the balance of probabilities, I am unable to conclude that the development would be one that complies with Article 3, Schedule 2, Part 1, Classes B and C of the GPDO, and thus lawful at the date of the application.

Other Matters

18. The planning merits of the proposal as outlined by the appellant in their evidence, or the presence of allegedly similar loft extensions to other houses nearby, are not relevant in determining whether the proposed rear and side dormer extension would be lawful or not. As such, I have not taken them into account in my determination of the appeal.
19. The appellant asserts that the refusal of the application is an injustice. However, I have found that the Council's decision was well founded.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed construction of a rear and side dormer 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.

F Cullen

INSPECTOR