



Appeal Decision

Site visit made on 23 August 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/B5480/X/21/3278650

52 Ingrebourne Gardens, Upminster RM14 1BN

- 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 Mark Russell against the decision of the London Borough of Havering.
 - The application ref D0222.21, dated 30 March 2021, was refused by notice dated 11 June 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 on the application form as: Loft conversion with rear dormer and velux windows to the front.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the proposed development would constitute permitted development by virtue of the provisions of Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. In any LDC appeal the appellant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. Class B, Part 1 of Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions. Limitation B.1(d)(ii) confirms that such development would not be permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres, where the house is not a terrace house. The 'resulting roof space' is the roof space as enlarged, taking into account any enlargement of the original roof space whether permitted by Class B or not.
5. The appeal site is one half of a pair of semi-detached houses. The original hipped roof has been extended to the side and rear at some point following the

grant of planning permission¹ for various extensions in 2017. The existing extended roof form is set back from the original front roof slope and projects beyond the original rear roof slope. This creates a complex shape for the purposes of calculating the cubic content of the existing extended roof space.

6. The Council refused to issue an LDC because it considered insufficient evidence and justification had been provided in respect of the cubic content of the existing extended roof. Article 2(1) of the GPDO clarifies that 'cubic content' means the cubic content of the structure or building measured externally. Various measurements have been set out on the existing roof plan, proposed rear elevation plan, proposed side elevation plans, and proposed volume plan.
7. The appellant states that the existing extended roof space has a cubic content of 34.45 metres cubed, and that the proposed rear dormer would have a cubic content of 15.03 metres cubed. If the appellant's calculations are correct, the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres following the completion of the proposal, which would accord with limitation B.1(d)(ii) of Class B.
8. However, annotations on the proposed plans show the appellant has not used measurements of the external parts of the existing extended roof space in their calculations². Furthermore, measurement C on the existing roof plan relates to half the width of the existing extended roof space, with the resulting cubic content calculation appearing to relate to only part of the existing extended roof space, and measurement C of the proposed dormer extends into the existing extended roof space. The existing extended roof space would therefore appear to have a cubic content significantly larger than 34.45 metres cubed, and the proposed rear dormer would appear to have a cubic content slightly smaller than 15.03 metres cubed.
9. The appellant's calculations have not been demonstrated, on the balance of probabilities, to rely on external measurements. In addition, on account of the complex nature of the shape of the existing extended roof space, I am not satisfied that accurate calculations of the resulting roof space have been provided.
10. The Council has not provided its own calculations of the cubic content of the existing extended roof space or that of the proposed development; however, as set out above, the burden of proof in this case rests with the appellant. Based on the evidence provided, it has not been demonstrated in a precise and unambiguous way that the proposed development would accord with limitation B.1(d)(ii) of Class B. I therefore find, on the balance of probabilities, that the proposed development has not been demonstrated to be permitted development under Class B, Part 1 of Schedule 2 of the GPDO.

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 the proposed loft conversion with rear dormer and velux windows to the front was well-founded

¹ The Council's ref: P1892.16

² Measurement A on proposed side elevation A is taken from the outer sides of the front and rear elevation walls at first floor level, rather than the outer edges of the existing extended roof; Measurement B on proposed side elevation A is taken from below the ridge of the existing extended roof; Measurement C on the existing roof plan is taken from the outer edge of the side elevation wall at first floor level, rather than the outer edge of the existing extended roof.

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.

L Douglas

INSPECTOR