



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2022

Appeal Ref: APP/R5510/X/21/3285376

1, Heatherfold Way, Eastcote HA5 2LG

- 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 J Bakrania against the decision of the Council for the London Borough of Hillingdon.
 - The application ref 66946/APP/2021/2839, dated 20 July 2021, was refused by notice dated 24 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 creation of dormer to rear of property within an existing roof.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers, that is, without a site visit, without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute.
3. The parties were contacted on 20 October 2022 and neither party raised any objections to the case proceeding on the basis that a site visit would not be carried out by the deadline of 27 October 2022.
4. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
5. The Council amended the description of the proposed development to read:

Conversion of roof space to habitable use to include a side/rear dormer and conversion of garage roof from hip to gable end.
6. The appellant says that the development is not a conversion of the garage roof from hip to gable, which indicates that he does not agree with the amended

description used by the Council. As the description of development which has been used on the application form, and which is included in the banner, adequately reflects what is shown on the plans, I have relied on the appellants description in my determination of the appeal.

Main Issue

7. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

8. The application was made under section 192(1)(b) of the Act which relates to proposed development in the form of operations. The appellant submits that the dormer would be permitted development as it is contained within the volume of the house. He says that the garage, the roof of which would undergo change, is part of the original building.
9. Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Part 1 Class B) relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Part 1 Class B is subject to conditions and limitations.
10. The Council confirms, in its delegated decision, that the proposed development conforms to all of the criteria in Part 1 Class B including the volume restriction referred to by the appellant. There is no evidence before me to suggest that this is not the case. However, the Council argue that the proposed development does not accord with condition B.2.(b)(iii). This condition is as follows:

other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse
11. The proposed development does not join the original roof to the roof of a rear or side extension, therefore restriction in respect of its relationship with the outside face of any external wall is relevant.
12. The existing plans show that 1 Heatherfold Way is a detached house. It has a garage to one side, the form of which wraps around the front and side of the two storey part of the house. Behind the garage a single storey element of the house accommodates a utility room and part of the kitchen. Part of the roof space in the garage is already used as a workshop.
13. The proposed plans show an extension along the side of house which would expand the size of the workshop. This would be above the utility and kitchen and would involve an alteration to the roof of the garage/utility/kitchen. This is why the proposed development falls to be considered under Part 1 Class B.
14. The proposed extension would be closer to the boundary of the site than the existing first floor side elevation of the house. Consequently, the enlargement of the building extends beyond this outside face of the building and the development fails to accord with condition B.2.(b)(iii) of Part 1 Class B.
15. As such the proposed development does not fall within the provisions of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 1995, as amended.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of creation of dormer to rear of property within an existing roof at 1, Heatherfold Way, Eastcote HA5 2LG 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.

Sarah Dyer

Inspector