



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/Y0435/X/22/3298135

52 Bowland Drive, Emerson Valley, Milton Keynes MK4 2DN

- 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 Adrian Wells against the decision of Milton Keynes Council.
 - The application ref 21/03615/CLUP, dated 1 December 2021, was refused by notice dated 11 February 2022.
 - 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 proposed loft conversion with rooflights to front roofslope and dormer extension to rear roofslope.
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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 18 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 26 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, 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.

Main Issue

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

Reasons

6. 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 loft conversion and dormer extension would amount to permitted development because it would not increase the volume of the existing roof by more than 50m³.
7. 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 establishes, at B1(d)(ii), that development is not permitted if the cubic content of the resulting roof space would exceed 50m³ in the case of a house which is not a terrace house.
8. The Council has confirmed that in all other respects the proposed extension meets the limitations and conditions of Part 1 Class B. There is no evidence before me to suggest that this is not the case. However, the Council considers that the roof space as enlarged, taking into account any enlargement to the original roof space, would exceed 50m³.
9. There is no dispute between the parties that a first floor side extension has been carried out over a garage attached to the house. This is shown on the plans and a planning application is referenced in the Council's officer report (Council ref. 02/00131/FUL). The appellant has calculated the roof void in the first floor side extension and shown that in addition to the proposed extension the combined volume would not exceed 50m³. However, the Council considers that the entire first floor extension should be included in the volume calculation.
10. Although the extension over the garage was not described as a roof extension it constituted the construction of additional accommodation on a subsidiary roof of either the dwelling as constructed or an existing house extension. Such an extension is the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Therefore, notwithstanding that the first floor side extension was not permitted development and required planning permission, its full volume must be included in the volume calculation.
11. There is no evidence before me to suggest that the garage had a pitched roof, and that the volume of that roof space should be offset against the additional volume of the first floor extension.
12. On the basis of the calculations provided by the appellant, which I have no reason to consider are inaccurate, the combined volume of the proposed extension and the roof voids in the extension over the garage are almost 50m³. It follows that once the volume of the space between the original height of the garage and the roof void is included, the 50m³ restriction would be exceeded.
13. 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

14. 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 rooflights to front roofslope and dormer extension to rear roofslope at 52 Bowland Drive, Emerson Valley, Milton Keynes MK4 2DN 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

