
Appeal Decision

Site visit made on 11 October 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/C5690/X/21/3288348

1A Marler Road, London SE23 2AE

- 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 certificate of lawful use or development (LDC).
 - The appeal is made by Mr R. Knight against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/21/122671, dated 6 July 2021, was refused by notice dated 22 September 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is described as "the building is a detached single family dwelling and has a rear dormer built under permitted development and is under 50m³".
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. 1A Marler Road is a recently constructed two storey dwellinghouse, granted planning permission for construction under reference DC/19/111568. The approved drawings show a two storey building with the rear part being single storey with a flat roof. The drawings of the building that has been constructed on the site show the rear part as two storeys with small, pitched element around the bottom part of the first floor and a flat roof above.
3. I noted on site that the small, pitched element referred to above has not been constructed and the side window shown on the drawings has not been installed. I have raised this with the parties, but no revised drawings have been submitted.
4. In their reasons for refusing the application for an LDC the Council indicate the development was proposed. For clarity, the application was made under section 191 of the Act for existing development. I was able to see the development during my site visit and I have considered the appeal based on what I was able to see on site.
5. The Council have assessed the extension against the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This indicates that they accept the first floor above the single storey rear projection

is an enlargement of the building, rather than part of the dwelling as constructed. I will consider the development in the same way.

6. The appellant suggests that the development is an addition to the roof and the description of development suggests they consider it constitutes development that has been permitted by Class B, Part 1, Schedule 2 of the GPDO. However, the Council suggest it is an enlargement of the dwellinghouse that should be considered under Class A, Part 1, Schedule 2 of the GPDO.
7. Consequently, the main issue in this case is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether the development comprises "permitted development" granted planning permission by the GPDO. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability.

Reasons

8. The first floor enlargement at 1A Marler Road is located on the flat roofed part of the approved dwelling. The eaves of the original single storey element have been retained, with the extension set in from those eaves. Further eaves are located around the flat roof above the first floor. The first floor enlargement extends from the rear first floor wall of the two storey section of the building and included changes to the internal layout of the building.
9. Class A, Part 1, Schedule 2 of the GPDO enables the enlargement, improvement or other alteration of a dwellinghouse, subject to a number of limitations and conditions. The limitations include that development is not permitted if: the eaves of the part of the dwellinghouse enlarged would exceed the height of the eaves of the existing dwellinghouse; extensions of more than a single storey extending beyond the rear wall of the original dwellinghouse by more than 3 metres or are within 7 metres of any boundary of the curtilage opposite the rear wall of that dwellinghouse; and the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3 metres.
10. The extension results in that part of the dwellinghouse being two storeys and the eaves of the roof of the extension are higher than those on the original dwellinghouse. The extension projects more than 3 metres from the rear of the original dwellinghouse and is within 7 metres of the boundary of the curtilage opposite the rear wall of the dwellinghouse. The extension is within 2 metres of the side boundary of the curtilage of the dwellinghouse and the eaves of the enlarged part are more than 3 metres in height. For these reasons, the extension does not comply with the limitations set out in Class A, Part 1, Schedule 2 of the GPDO.
11. Given the location of the enlargement on the roof of the single storey projection to the rear of the building, it is an extension to that roof. Consequently, it could constitute an addition or alteration to the roof under Class B, Part 1, Schedule 2 of the GPDO, subject to the conditions and limitations attached to that class. The appellant suggests that, as the extension is less than 50 cubic metres, it complies with that Class.

12. However, the conditions and limitations under Class B, Part 1, Schedule 2 of the GPDO include condition B.2(b)(ii) which states that, other than an enlargement joining an original roof to that of an extension, no part of the enlargement should extend beyond the outside face of any external wall of the original dwellinghouse.
13. Given the location of the enlargement attached to the rear wall of the two storey section of the dwelling, it would extend beyond the outside face of an external wall of the original dwellinghouse. It is above a single storey part of the original dwelling that is not an extension and does not join the original roof to an extension. As a result, it does not comply with condition B.2(b)(ii), Class B, Part 1, Schedule 2 of the GPDO.
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 development described in the application as "the building is a detached single family dwelling and has a rear dormer built under permitted development and is under 50m³" 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.

AJ Steen

INSPECTOR