



Appeal Decision

Site visit made on 14 November 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/C5690/X/22/3293192

35 Howson Road, Crofton Park, London SE4 2AL

- 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 Ms Nicky Dussek against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/21/124798, dated 03 December 2021, was refused by notice dated 21 January 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 works to build new loft extension on main and rear roof area".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed loft extension would be granted planning permission by Article 3, Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

4. Subject to limitations and conditions, 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, and Class C of Schedule 2, Part 1 of the GPDO permits

other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the loft extension, would be granted permission by virtue of Class B and C. Paragraph B.1 and B.2, and C.1 and C.2 sets out the limitations and conditions which proposals must adhere to benefit from permitted development rights.

5. The Council state that the cubic volume of the proposed roof extension would be 48.65 cubic metres. This would exceed the cubic content of the original roof space by more than 40 cubic metres, for this terraced house, contrary to Class B.1 (d).
6. The appellant considers that the Council's calculation is incorrect and states that the total cubic volume of the extension is only 34.54 cubic metres (20.50 cubic metres in the main rear dormer and 14.04 cubic metres in the dormer over the original back addition). In support of this figure, the appellant has included drawings with dimensions, and the Planning Portal Volume Calculations screen shot (PPVCS), which has been used to calculate this figure.
7. Whilst the appellant's formula for calculating the main rear dormer is correct, the screen shot image for the formula used to calculate the dormer over the original back addition is incorrect. Indeed, the formula used is one which should only be used where the height of the dormer does not exceed the height of the original back addition, as illustrated in the image in the PPVCS. However, the proposed dormer on top of the original back addition clearly goes above the height of the original back addition, and therefore the formula and calculation provided by the appellant is incorrect.
8. The Council's approach is the correct one, where they have split the calculation of the cubic volume of the rear dormer into two specific sections (a top element and a lower element) and then added these together. However, the Council's total sum for the lower element of the dormer over the back addition is incorrect (for instance, $0.81 \times 2.664 \times 4.61 / 2$ does not equal 9.95 cubic metres as stated in the Officer's Report). Notwithstanding this, even if I were to insert the correct figure into this calculation, the resulting total cubic volume of the proposed extension would still exceed 40 cubic metres.
9. From my reading of the all the material submitted including the drawings and the appellants' measurements and calculation, the proposed loft extension would exceed 40 cubic metres of the existing dwellinghouse. Therefore, the development would fail to meet the limitation under Paragraph Class B.1 (d) of Schedule 2, Part 1, Class B of the GPDO.

Conclusion

10. The development is not one that complies with all of the limitations and conditions of Article 3, Schedule 2, Part 1, Class B respectively of the GPDO, and hence would not have been lawful at the date of the application. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the new loft extension on main and rear roof area 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.

R Satheesan INSPECTOR