



Appeal Decisions

Site visit made on 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Appeal A Ref: APP/G5180/X/21/3287990

Land at 1 Ryecroft Road, Petts Wood, Orpington BR5 1DR

- 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 Miss Leyla Ali against the decision of the Council of the London Borough of Bromley.
- The application ref DC/21/03099/PLUD, dated 17 June 2021, was refused by notice dated 18 October 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 in the application as a '2 floor extension'.

Summary Decision: The appeal is dismissed

Appeal B Ref: APP/G5180/W/21/3285931

Land at 1 Ryecroft Road, Petts Wood, Orpington BR5 1DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Leyla Ali against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/21/03196/FULL6, dated 23 June 2021, was refused by notice dated 9 September 2021.
- The development proposed is a first floor side extension and elevational alterations.

Summary Decision: The appeal is dismissed

APPEAL A

Application for costs

1. An application for costs was made by Miss Leyla Ali against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

Main Issue

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore,

based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to Appeal A and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.

3. The main consideration in this appeal is whether or not the proposed development would have been permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) and, therefore, lawful if begun on the date the application was made. The burden of proof in this case is on the appellant.
4. In reaching my decision in this case I have had regard to the MHCLG Technical Guidance on permitted development rights for householders.

Reasons

5. Both parties have referred to Class A and Class B, of Part 1, Article 3, Schedule 2 of the Order, hereafter referred to as Class A and Class B. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, while Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
6. The parties dispute that the development would comply with condition B.2.(b)(i) of Class B. The relevant extract of the condition is as follows:
(b) the enlargement must be constructed so that—
 - (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—*
 - (aa) the eaves of the original roof are maintained or reinstated; and*
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves*
7. The condition has been constructed so that requirements (aa) and (bb) only bite when the development is neither a hip-to-gable enlargement nor an enlargement which joins the original roof to the roof of a rear or side extension. Whilst the parties agree that the proposed development would not include the former of these two exceptions, the appellant suggests that it would include the latter.
8. A rear or side extension is defined in B.4.(b) of Class B as including 'an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse'. The development subject of this appeal is described as a first floor side extension. The appellant suggests that there are two elements to this, namely the first floor element and the roof above this. They suggest that the first floor element of the proposed scheme is a side extension, as defined in B.4.(b). They state that 'the existing roof is a principal part of the existing house and the proposed extension would extend from its side, and the enlargement would include a roof that will join to the original roof, thereby complying with the exception set out in B2(b)(i)'.

9. The building subject of this appeal is one of a pair of semi-detached two-storey dwellings. The adjoining property has a design and roof form that mirrors that of the appeal dwelling. The main ridge of the appeal dwelling is shared with the adjoining property, and the largest element of the roof slopes from the shared ridge to the eaves on the side elevation of the building at ground floor level. This is known as a catslide roof, which in this case covers both the two storey element of the building and the single storey element to the side of this. There are two smaller roof slopes on the front and rear elevation; these finish at a higher eaves level at first floor. These, together with the whole of the catslide roof comprise the roof of the dwellinghouse in this case for the purposes of Class A and Class B of the Order.
10. In addition to the above, having regard to the particular form and design of the dwellinghouse, as outlined above, I do not regard the single storey side element to be a side extension. This is clearly an integral part of the original dwellinghouse that shares the same roof as the two-storey element. This, together with the two-storey element, comprise 'the principal part of the original dwellinghouse' for the purposes of Class B and the B.4.(b) interpretation in particular.
11. Whilst I acknowledge that the proposed enlargement would extend the width of the existing first floor of the property, it would extend no further than the side wall of the single storey element. As I have concluded that this single storey element is part of the principal part of the original dwellinghouse, the enlargement would not extend from the side of the principal part of the original dwellinghouse. Instead, it would sit entirely above it, being an enlargement entirely above the roof plane of the catslide roof. The proposed development would not, therefore, include a side extension, as suggested by the appellant. Instead, the whole of the proposed enlargement would be an addition to the roof of the dwellinghouse, falling entirely within the type of development described in Class B.
12. Having regard to the above, neither the proposed enlargement itself, nor the existing single storey element of the dwellinghouse include or comprise a side extension for the purposes of the B.4.(b) interpretation. Accordingly, no part of the development proposed would join the original roof of the dwellinghouse to the roof of a rear or side extension. For this reason, the enlargement proposed would not be exempt from requirements (aa) and (bb) of condition B.2.(b)(i) of Class B, which are set out above.
13. With regard to these requirements, the development would retain the eaves of the dwellinghouse at first floor level and continue these across the proposed enlargement. It would not, however, retain the existing eaves of the catslide roof that finish at ground floor level, on the side elevation. Whilst the eaves of the catslide roof are much lower than those at first floor, neither the Order nor the MHCLG Technical Guidance inform or suggest that, where there are eaves at varying levels, one should be preferred over the other for the purposes of requirement (aa) of condition B.2.(b)(i). The requirement must, therefore, be read as applying to all eaves of the original roof of the dwellinghouse.
14. In addition to the above, the proposed development would remove the whole of the catslide roof, including its eaves at ground floor level. Accordingly, the development would not comply with requirement (bb) of condition B.2.(b)(i).

15. Whilst I note the appellant's reference an appeal decision¹ relating to an LDC application for a two storey rear extension, the matters considered in that case differ from those before me. In that case the Inspector was satisfied that there would be a rear extension for the purposes of B.4.(b) and that the proposed enlargement would have complied with the second exception referred to in condition B2(b)(i).
16. I also note the appellant's reference to other appeal decisions² relating to other LDC applications. However, these decisions, together with the appeal decision referred to above, consider the matter of eaves height for the purposes of Class A, and the criteria of A.1. in particular. There is no dispute in the case before me with regard to Class A and the eaves height of the proposed enlargement in relation to the eaves height of the existing dwellinghouse. These decisions do not, therefore, change my conclusions above.
17. I now turn to the appellant's case with regard to the need to comply with both Class A and Class B. I do not disagree that Class A is relevant in this case. After all, the scheme includes an alteration to the front elevation of the dwelling in order to provide the new first floor window. However, I have found the proposed enlargement to consist entirely of an addition to the roof. Accordingly, for the development to be permitted by the Order, it must also comply with the conditions and limitations of Class B.
18. I note the appellant's reference to the extract from page 29 of the MHCLG Technical Guidance, which follows paragraph A.1.(k) under Class A. The extract of the Guidance states that 'where an extension to a house under Class A includes works that would require an alteration to the existing roof of the house (for example where the roof of the extension joins the existing roof), the alterations to the existing roof of the house will need to meet the requirements of Class B or C (as appropriate) in order to be permitted development'.
19. This guidance is consistent with my approach in this case; that it is necessary to consider both Class A and Class B, and that compliance with only one class is not sufficient for the development to be permitted by the Order. Indeed, I note that A.1.(k)(iv) of Class A states that development is not permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse. In view of this, it is right that where development includes an alteration (in this case an addition) to the roof of the dwellinghouse, it is necessary for the development to comply with the conditions and limitations of Class B, which permits such development, as well as the conditions and limitations of any other Classes that might be relevant.
20. In order to demonstrate their point, the appellant has drawn my attention to the relationship between Class AA and Class B. Whilst I note their evidence in this regard, the advice on page 8 of the MHCLG Technical Guidance explains that, 'in order to be permitted development, a proposal must meet all the limitations and conditions under each Class **relevant to the proposal**' (my emphasis). If both Class B and Class AA are relevant to a proposed scheme of development, then the guidance is clear; that compliance with both Classes is necessary. However, if a proposed scheme were to comprise, for example, the removal of the roof of a dwellinghouse and the addition of further storeys, the decision maker must ask the question: Is Class B, which permits only an

¹ APP/C5690/X/15/3136722

² APP/C5690/X/16/3155422 and APP/Y1945/X/09/2115124

addition or an alteration to a roof that will otherwise be retained, relevant? If it is not, then compliance with the conditions and limitations of Class B would not be necessary for the scheme to be permitted by the Order.

21. On a similar note, I note the appellant's reference to Class C of Part 1, Article 3, Schedule 2 of the Order. Whilst this Class also permits an alteration to the roof of a dwellinghouse, the Council does not suggest that it is relevant to the development in this case. I agree with this, particularly as the MHCLG Technical Guidance confirms that alterations permitted by Class C will not involve the enlargement of a house (page 38). It is not, therefore, necessary to consider whether the development proposed in this case complies with the conditions and limitations of Class C as this Class is not relevant to the development subject of this appeal.
22. Having regard to all of the above, I conclude that the development as proposed would not have been permitted by the Order if begun on the date the LDC application was made.

Conclusion

23. 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 erection of a single storey rear extension 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.

Formal Decision

24. The appeal is dismissed.

APPEAL B

Application for costs

25. An application for costs was made by Miss Leyla Ali against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

Preliminary Matters

26. The development is described in the application form as a first floor side extension. The Council's decision notice adds reference to elevational alterations to the description. As this addition is repeated by the appellant in their appeal form, I have included this in the description of development in the header above.

Main Issue

27. The main issue in this case is the effect of the proposed development on the character and appearance of the site and surrounding area.

Relevant Policy and Guidance

28. Policy 6 (Residential Extensions) of the London Borough of Bromley Local Plan January 2019 (LBBLP) requires, amongst other matters, the scale and form of proposed alterations or enlargements to respect or complement those of the

host dwelling and be compatible with development in the surrounding area. The requirements of Policy 37 (General Design of Development) of the LBBLP include that development should complement the scale, proportion and form of adjacent buildings and areas, and positively contribute to the existing street scene.

29. The appellant has referred to Policy 8 of the LBBLP, although a copy of this has not been provided with their evidence. The appellant suggests that this 'sets the objective in relation to residential extensions, of retaining adequate side space between houses'.
30. The principles of good design are supported by relevant sections of the National Planning Policy Framework (the Framework) that have been drawn to my attention. I also note reference to certain extracts of the MHCLG National Design Guide (NDG), as well as the Council's Adopted Supplementary Planning Guidance No. 2 Residential Design Guidance (SPG).
31. Whilst there is reference to Policy D4 (Delivering Good Design) of the London Plan dated March 2021, this Policy relates more to the process for delivering good design, rather than specifying the elements of a development that contribute to it, as the above-mentioned Policies do. This is, therefore, of limited relevance to the main issues in this case.

Reasons

32. As I have noted on Appeal A above, the dwelling at the appeal site is one of a pair of semi-detached properties. These appear relatively unaltered and currently demonstrate a strong sense of symmetry in terms of their design, features and their form. The catslide roof on both properties is a striking feature that dominates the form of both buildings and adds to their architectural quality. This can be appreciated particularly when travelling along Kenilworth Road towards the appeal site, as well as from Ryecroft Road.
33. Ryecroft Road and Kenilworth Road are characterised by pairs of semi-detached residential properties or blocks of maisonette flats that have the balanced appearance of semi-detached pairs. However, none share the form and design of the appeal dwelling and the adjoining property, particularly the catslide roof feature. There are examples of similar semi-detached properties in the wider area, some of which have been drawn to my attention.
34. The plan submitted with the application subject of Appeal B is the same as that submitted with the Appeal A LDC application. The development proposed would extend the first floor of the dwelling across to the full width of the property. To achieve this the proposal would see the loss of the catslide roof in its entirety, including the edge of the slope across the front elevation and the side eaves at ground floor level. The most notable change to the property would, therefore, be to its roof.
35. I acknowledge that the resultant form and appearance of the dwelling would be similar to some of the other properties in the immediate vicinity of the appeal site. However, its form and appearance would be wholly at odds with the adjoining property. The additional first floor element and new roof form would be a bulky addition to the pair. It would unbalance the appearance of the pair to an unacceptable degree and would fail to retain important elements of their symmetry.

36. The appellant is right, that the design of the appeal property and adjoining pair does not conform to the otherwise relatively uniform design of other properties in Ryecroft Road. For this reason, the appearance of this pair of semi-detached properties within the street is all the more striking. This does not, therefore, provide a reason to allow development that would change the design of one of the pair so that it is at odds with its adjoining pair, but nevertheless conforms with the prevailing design of properties in the area. Indeed, the pair would appear odd within the street scene, causing harm to the character of the surrounding area.
37. All things considered, I conclude that the development would have an unacceptable effect on the character and appearance of the site and surrounding area. The scheme would fail to comply with Policy 6 of the LBBLP as it would fail to respect and complement the scale and form of the host dwelling. In view of its effect on the pair of semi-detached properties and the appearance of both within the street scene, I also find it to be incompatible with development in the surrounding area, in conflict with both Policy 6 and Policy 37 of the LBBLP. The development would also fail to comply with sections of the good design principles of the NDG, SPG and the Framework that have been drawn to my attention.
38. Although I do not know the requirements of Policy 8 of the LBBLP, I do not find harm with regard to the remaining space to the side of the dwelling, particularly as this would not be altered by the development. This does not, however, alter my findings above.

Other Matters

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
40. At the site visit I viewed the buildings along Ryecroft Road and Kenilworth Road, opposite the appeal site. I note that some of these have been extended and altered, resulting in some differences between some properties that form an adjoining pair. In most cases I found the additions or alterations to be sympathetic to the character of the host property and its adjoining pair. Notwithstanding this, a small number of examples of unsympathetic development within the context of the appeal site does not reduce the weight I attribute to the harm I have identified in this case.
41. The appellant has referred to examples in the wider area where properties that have a catslide roof have been extended. During the site visit I was able to view many of the properties referred to.
42. I note that some of the examples have retained elements of the original roof form, despite being extended. This has assisted in retaining some form of balance between the pairs of properties in question.
43. In some of the cases³ the Council suggest that the adjoining property had already been extended and that, having regard to this, the development was considered to be acceptable. There are, therefore, material differences

³ 32 Nightingale Road and numbers 57, 71, and 87 Woodhurst Avenue.

between the circumstances and details of these cases, and those subject of this appeal.

44. I do not have full details of the remaining cases that have been drawn to my attention. As such, I do not know whether the development is historic, whether permission has been granted for the development shown, or the circumstances under which the development may have been permitted. I cannot, therefore, make an informed comparison with these cases and the proposed development that is before me. Nevertheless, many of the examples given are not within the close vicinity of the appeal site. These examples do not, therefore, characterise the context of the appeal site, such that the development permitted in those cases would justify the approval of that subject of this appeal.
45. As for the suggested fall-back position, I have concluded on Appeal A that the development proposed would not be permitted. It may be the case that a side dormer window extension to the appeal property would be permitted by the Order. However, no details of an alternative permitted scheme have been provided, such that I could compare the effect of this with the effect of the development subject of this appeal. Accordingly, whilst some form of extension of the property might be permitted by the Order, this carries limited weight in this appeal.

Planning Balance

46. I have identified conflict with the development plan in this case. I have had regard to all material considerations, but find these of insufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan when read as a whole. Neither can I be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted.

Conclusion

47. Having regard to my findings above and all matters raised, I conclude that the appeal should be dismissed.

Formal Decision

48. The appeal is dismissed.

J Moss

INSPECTOR