



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/E5330/X/20/3259958

23 Wricklemarsh Road, Kidbrooke SE3 0NF

- 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 Mrs Deepti Janak against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref 20/1264/CP, dated 5 May 2020, was refused by notice dated 27 July 2020.
 - The application was made under 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 a loft extension.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Main Issue

3. The main issue in this appeal is whether the Council's refusal to grant an LDC in respect of the proposal was well-founded. This turns on whether the appellant has shown that, on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

4. The appeal site contains a semi-detached dwelling. The dwelling occupies a generously proportioned plot. There is a two storey extension at the side of the dwelling and a single storey extension at the rear. The proposal entails erecting a dormer across the roof slope at the rear of the dwelling, together with altering the hipped roof to a gable end at the side and removing part of the pitched roof over the side extension, replacing it with a flat roof.
5. The GPDO at Article 3, Schedule 2, Part 1, grants planning permission for certain development within the curtilage of a dwelling. This includes in Class B the enlargement of a dwelling consisting of an addition or alteration to its roof,

provided the relevant limitations and conditions in that Class at paragraphs B.1 and B.2 are met. There was no dispute that the proposal would meet the height and locational limitations in paragraph B.1(b) and (c), the limitations in paragraph B.1(a), (e) and (f) not applying in this instance. Also, there was no dispute that the proposal would meet the conditions in paragraph B.2(a) and (b) concerning the use of similar external materials and the distance set back from the eaves of the original roof. Based on the available evidence, there is no sound reason why I should find any differently in respect of the above matters.

6. For the proposal to meet the limitation at paragraph B.1(d), the volume of the resulting roof space must not increase the volume of the original roof space by more than 50 m³. In the GPDO, 'original' in relation to a building means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date. The Government's Technical Guidance¹ (TG), which assists in interpreting the GPDO, advises that the 'original roof space' is the roof space in the 'original building'. It also advises that for the purposes of Class B 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by that Class or not.
7. The appellant ascertained that the proposed dormer would increase the volume of the original roof space by around 47 m³. The above figure was arrived at by subtracting the volume of the part of the existing side extension roof to be removed from the volume of the resulting roof space. However, paragraph B.1(d) does not provide for offsetting an increase in the volume of the resulting roof space where the volume limit would otherwise be exceeded. When the section of the existing side extension roof to be removed is also taken into account, the volume of the resulting roof space following erection of the proposal would exceed the 50 m³ limit in paragraph B.1(d).
8. The TG supports the interpretation set out above. It advises that any previous enlargement to the original roof space in any part of the dwelling has to be included when assessing whether the volume allowance is met. No exception is made for the volume of existing previous enlargements where part or all of that enlargement is proposed to be removed. As a result, it is the total volume of all additions or alterations to the roof of the original dwelling that should be included when ascertaining the volume of the resulting roof space. The overall increase in the volume of the resulting roof space over the original roof space due to the proposal would not be changed by removing part of the existing side extension roof.
9. Therefore, on the balance of probability the appellant has been unable to show that the proposal would be granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class B. It follows that in the absence of a grant of express planning permission subsequent to the submission of an application, the proposal would not be lawful for planning purposes. No such grant of permission was drawn to my attention.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a loft extension was well-

¹ MHCLG September 2019.

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.

Stephen Hawkins

INSPECTOR