



## Appeal Decision

Site visit made on 4 January 2023

**by Richard S Jones BA(Hons), BTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 February 2023**

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**Appeal Ref: APP/L5810/X/21/3280078**

**56 Suffolk Road, Barnes, London, SW13 9NR**

- 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 B Brandreth KC against the decision of Richmond Upon Thames London Borough Council.
  - The application ref 21/1774/PS192, dated 17 May 2021, was refused by notice dated 12 July 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 rear and front roof dormer extensions.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made under s192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) and sought to establish whether operations proposed, comprising rear and front roof dormer extensions, would be lawful.
3. I note the appellant's submission that the proposal would be an improvement on the current situation, but such applications are determined on the basis of fact and law. Therefore, the planning merits can form no part of my assessment as to whether an LDC should be granted.
4. I saw at my site visit that the appeal dwelling had been altered at roof level so that its form appears to match neither the existing nor the proposed drawings submitted with the LDC application. I am still able to consider the appeal under s192(1) because the determination is to be made as to whether the development would have been lawful against the form of the pre-existing building at the time of the application, which I have assumed, on the basis of the Council's determination, to reflect the existing drawings submitted. I will refer to the same as the existing baseline.

### Main Issue

5. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the rear and front roof dormer extensions would have been lawful on the date of the LDC application on the basis that they would have been granted planning

permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

## Reasons

6. The appeal relates to a two storey detached dwelling with additional accommodation at roof level. The roof form includes three, staggered gables of varying height expressed to the road. The ridgelines of the two largest gables run towards the rear of the house where they meet a pitched roof with a ridgeline running parallel to the road, presenting a gable to the western side elevation. Running parallel to the road, that pitched roof also extends a relatively short distances past the other side of the main central gable, terminating in a stepped hipped roof form.
7. The rear pitch of that roof (facing the garden) incorporates a dormer. The proposal adds to its width on both sides<sup>1</sup>. The proposal also adds to the mass of the rear north eastern corner of the roof<sup>2</sup>. Save for the materials, those aspects are not a matter of dispute between the parties.
8. A smaller existing dormer is also positioned on the front of the roof pitch running parallel to the road, straddling the ridgeline of one of the front facing gables. It is proposed to extend the same to create an 'L' shaped dormer returning on the side pitch of the main central gable roof<sup>3</sup>. A further dormer is proposed projecting from the front facing roof pitch on the other side of the central gable, extending out onto and along the side of the gable roof<sup>4</sup>.
9. Article 3 and Schedule 2, Part 1, Class B of the GPDO grant planning permission for *'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof'*, subject to limitations and conditions. The limitation in dispute is B.1(c) which states that development is not permitted by Class B if *'any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway'*.
10. MHCLG Technical Guidance<sup>5</sup> explains that in most cases the principal elevation will be that part of the house which fronts the main highway serving the house. It is further explained that the principal elevation could include more than one roof slope facing in the same direction. In such cases, all such roof slopes will form the principal elevation and the line for determining what constitutes *'extends beyond the plane of any existing roof slope'* will follow these slopes.
11. In the case of the appeal dwelling, the principal elevation is staggered and comprises the three gable ends, the front of the ground floor extension to the side of the westernmost gable and the first floor wall above it, and the roof pitch facing the road. As the gables are expressed to the road, their respective roof pitches face towards the side boundaries.
12. The appellant accepts that the roof slope on one side of the existing front dormer extension forms part of the principal elevation so it is unclear why the same wouldn't apply to the remainder of that roof slope on the other side of

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<sup>1</sup> Coloured red and green on the volumetric study

<sup>2</sup> Coloured pink on the volumetric study

<sup>3</sup> Coloured yellow on the volumetric study

<sup>4</sup> Coloured blue on the volumetric study

<sup>5</sup> Ministry of Housing, Communities & Local Government Permitted development rights for householders – Technical Guidance – September 2019

the dormer, and to the roof slope facing towards the highway on the other side of the main central gable, which are in the same plane.

13. The appellant's volumetric drawings clearly illustrate that two of the front dormers<sup>6</sup> would extend beyond the plane of those roof slopes which forms the principal elevation of the dwellinghouse and fronts a highway, in conflict with limitation B.1(c). That conclusion is not affected even if the dormers do not face the road (the dormers actually have no windows so are not facing in any particular direction). Moreover, in the particular circumstances of this case, it matters not that the dormers are behind the front plane of the gables, because they still extend beyond the roof slope of the principal elevation which fronts a highway.
14. I note the example massing drawing submitted by the appellant which shows a gable principal elevation and a dormer set back from that frontage facing to the side. However, the scenario depicted is not comparable because the proposed dormers extending from the side roof planes of the main central gable also extend forward from the main roof slope fronting the highway.
15. On the evidence before me and the balance of probabilities, the development would breach the limitations set out in paragraph B.1(c) of the GPDO.
16. Development permitted by Class B is also subject to conditions, including B.2(a) which is that *'the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'*.
17. The Technical Guidance explains that the *'condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration.'*
18. The aspect in dispute relates to the proposed windows in the rear dormer. In that regard, the Technical Guidance states that window frames should be similar to those in the existing house in terms of their colour and overall shape.
19. The submitted photographs show that the windows in the rear elevation are white casements with relatively thick sections. Predominantly they include mullions, transoms, top hung ventilators and side hung sashes. Others contain top hung ventilators above a main pane. The appellant advises that the window frames are either uPVC or timber.
20. Whilst the proposed timber windows would match those that are timber (in terms of materials used), it is proposed that they are painted black. I accept that their overall shape would be rectangular, but, their appearance would be noticeably very different given an apparent slimmer profile, different colour and the number and type of openings in the existing which visually break up their scale and create different size rectangles within the main window frame.
21. If built as proposed, the windows would not comply with Condition B.2(a) as they would not be of similar appearance to those used in the existing

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<sup>6</sup> Shaded in yellow and blue

dwellinghouse. For the avoidance of doubt, this is not a determination as to the merits of the design or appearance of the windows, it is merely a comparison of the visual impacts of the materials (windows), which the Technical Guidance highlights '*will be the most important consideration*'.

22. I appreciate that the Technical Guidance is as its title implies, rather than legislation or policy. Nevertheless, given its purpose it does carry substantial weight and no arguments are advanced as to why I should depart from it in this case. In any event, the appellant has not demonstrated, on the balance of probabilities, that that the proposal would be granted planning permission by Article 3 and Class B of the GPDO, and thus would have been lawful at the time of the application.

### **Conclusion**

23. For the reasons given, I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me under s195(3) of the 1990 Act as amended.

*Richard S Jones*

INSPECTOR