



Appeal Decision

Site visit made on 7 February 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/Z5060/X/21/3287428
100 Lichfield Road, Dagenham RM8 2AX

- 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 Blerim Lama against the decision of the Council of the London Borough of Barking and Dagenham Council.
 - The application ref 21/01694/CLUP, dated 13 September 2021, was refused by notice dated 4 November 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 was described as '*a two storey rear extension and loft conversion*'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development for which a certificate of lawful use or development (LDC) was sought was initially described in the terms set out in the banner heading, above. Subsequent submissions from both parties, including the formal decision notice, have described it more fully as:

Construction of a hip-to-gable roof extension to accommodate a rear dormer extension including two roof lights to the front to facilitate conversion of roof space into habitable accommodation and the addition of a first floor rear extension.

3. This appears to me to be a more accurate description of what is shown on the submitted plans and I have determined the appeal accordingly.

Main Issue

4. The application seeks to rely on permitted development rights set out within the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order) to carry out the proposed alterations as shown on the submitted plans and elevations. It is stated by the appellant that the proposed development has been designed within the principles set out in Classes A, B and C of Part 1, Schedule 2 of the Order.
5. There are a number of elements to the proposed development, as more accurately and comprehensively captured in the revised description of development set out above. The Council's contention is that in order to facilitate the hip-to-gable extension, the proposal entails the building up of part of the front and rear elevation walls in the T-fall element of the roof construction where the front and rear eaves levels are higher than that of the

flank hipped roof's eaves level. This would, the Council contend, result in the enlarged part of the dwellinghouse being within 2 metres of the boundary of its curtilage and the eaves height would exceed 3 metres.

6. In order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. The Council have not found fault in relation to the provisions of Class B, or indeed Class C, of the Order in which context the appellant states the scheme was also designed. Although the proposed development is described in terms of its various elements, I have not been presented with any compelling evidence to lead me to consider elements of the scheme as being physically or functionally severable from each other. I have therefore determined the appeal accordingly.
7. The main issue is therefore whether the Council's decision to refuse the LDC was well-founded. In such appeals, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

Reasons

8. The appeal property is an outwardly modest semi-detached house with a hipped roof, within a residential setting comprised of a mix of similar semi-detached properties and short two-storey terraced blocks. Hipped roofs are typical, a distinctive feature of which is a T-fall roof design where the eaves to the flank hip are set lower than those of the front and rear elevations.
9. The appeal property (and the other half of the semi-detached property) are positioned forward of the terraced block to the north, where those dwellings lie behind a small grassed area. A pavement runs around the periphery of this grassed area, immediately adjacent to the appeal property's flank elevation and then along the front face of those properties. The path provides direct access to the front of those dwellings, and to the rear of the appeal site via a gate. The submitted site plan indicates that this path does not lie within the appeal site.
10. In order to facilitate the proposed hip-to-gable extension, the proposal would include the building up of a small area of wall on front and rear elevations of the building, which the Council has helpfully colour-coded blue on its appeal statement. This would not, the Council argue, amount to an alteration to the roof as envisaged by Class B. Rather, what is proposed puts forward a scheme invoking determination against the requirements of both Class B and, as an 'enlargement, improvement or other alteration' of the dwellinghouse, Class A.
11. I agree. The areas of the front and rear elevations to be built up are not part of the roof. Rather, they lie below the eaves level at front and rear and are contiguous with the existing front and rear walls. Whilst what is proposed to be constructed on the roof plane of what is currently the flank hip can reasonably be considered to be an extension to the roof, and would therefore fall to be considered against the provisions of Class B of the Order, what is involved in the building up of these areas of wall and the extension of the wall up to the front and rear eaves level falls for consideration against the provisions of Class A.
12. The areas of these walls to be built up to facilitate the hip-to-gable extension are within 2 metres of the outside face of the flank elevation wall. I have no reason to doubt the Council's approach in concluding that, as such, these areas

lie within 2 metres of the boundary of the curtilage of the dwellinghouse. Nor has the appellant challenged the Council's conclusion that the height of the eaves above these extended areas of façade would exceed 3 metres. I have no reason to doubt the Council's conclusion in this respect either.

13. The appellant has referred to two photographs set out in Appendices A and B of the Grounds of Appeal. The former shows the front / flank elevations of the property, highlighting the roof arrangements of the property's front and flank elevations, whilst the latter is an aerial image of the property. However, there is no ambiguity where the proposed hip-to-gable extension would be constructed and the submitted plans clearly show it in both plan and elevation form. Rather, and particularly so in respect to the image at Appendix A, they more readily demonstrate the Council's case and support my conclusions in this respect.
14. I have noted the references made to other examples of similar extensions for which LDC's have previously been granted, and to applications for planning permission, including at the appeal property itself. However, the LDC examples cited were some time ago and in some cases were subject to the provisions of a previous version of the Order. Even where determined against the current version of the Order, I only have the limited extracts of those schemes before me as provided by the parties. With regard to planning applications, consideration of the planning merits of a proposal does not fall to me to consider in an appeal made under s195 of the Town and Country Planning Act 1990 (as amended). Whilst there may well be similarities between the schemes, I have determined this matter on the basis of the proposed scheme, the extant provisions of the current Order and the evidence before me.
15. Thus, for these reasons set out, 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. As such, the proposed works of extension are not permitted development by virtue of the provisions of Class A.1.(i) of Schedule 2, Part 1 of the Order. As it has not been demonstrated that these works are physically or functionally severable from other elements of the scheme, I have considered the scheme as one and, on the balance of probability, the Council's refusal of the application was well founded.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of construction of a hip-to-gable roof extension to accommodate a rear dormer extension including two roof lights to the front to facilitate conversion of roof space into habitable accommodation and the addition of a first floor 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.

G Robbie

INSPECTOR