



Appeal Decision

Site visit made on 15 March 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 MARCH 2023

Appeal Ref: APP/B0230/C/22/3298214

Land at 2 Hollybush Road, Luton, Bedfordshire LU2 9HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Lavdim Alliu against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 21 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission the installation of a rear dormer including a Juliet balcony (consisting of handrail and glass and associated fixtures and fittings) and accompanying window situated to the rear of the dwelling on the land ('the rear dormer').
 - The requirements of the notice are to demolish the rear dormer and remove from the land any resulting waste materials and debris.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (c) appeal

2. The ground of appeal is that the matter alleged in the enforcement notice does not constitute a breach of planning control. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
3. The appeal property contains a two storey, semi-detached dwelling. The dwelling has been enlarged including by erecting two storey side and single storey rear extensions.
4. The notice attacks a dormer erected over most of the rear roof slope of the original dwelling. Erecting the dormer is a building operation and therefore amounts to 'development' as defined in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class B, grants planning permission for the enlargement of a dwelling consisting of an addition or alteration to its roof. This is subject to the limitations in paragraph B.1, as well as the conditions in paragraph B.2, being satisfied where relevant.

6. The dormer satisfies the relevant limitations in paragraph B.1 at (b), (c) and (e). The dormer is no higher than the tallest part of the existing roof. The dormer is not situated on a roof slope which forms the principal elevation of the dwelling fronting a highway. The dormer does not include a veranda, balcony or raised platform. Also, the relevant condition in paragraph B.2(b) concerning setting back the dormer at least 0.2 m from the eaves is satisfied.
7. Even so, to satisfy the relevant condition in paragraph B.2(a), the external materials of the dormer must be of a similar appearance to those of the existing dwelling. For the purposes of the GPDO, 'existing' means the dwelling as it existed immediately before carrying out the development. The Government's Technical Guidance (TG)¹ assists in interpreting the GPDO and whilst not having the same force as statute, can be regarded as authoritative. It advises that the 'similar materials' condition is intended to ensure that any addition or alteration to a roof has an appearance that minimises visual impact and is sympathetic to the existing dwelling. The TG goes on to advise that the face and sides of a dormer should be finished using materials that give a similar visual appearance to the existing dwelling. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the dwelling when viewed from ground level.
8. The face and sides of the dormer are finished in smooth render, painted a white or cream colour. It is highly likely that the roof of the existing dwelling, i.e., as it existed immediately prior to erecting the dormer, would have been covered with small dark brown coloured tiles. Similar roof tiles cover the roof of the adjoining dwelling, as well as the roofs of other residential property in the locality. The smooth lines and light colour tones of the painted render finish applied to the dormer face and sides bears little resemblance to and is in complete contrast with the more granulated texturing, rippled profiles and dark brown colour tones of the tiles that covered the roof of the existing dwelling. As a result, the painted render does not have a similar visual appearance to the existing dwelling. It is dissimilar in terms of colour and design to the materials used in the main roof of the existing dwelling when viewed from ground level. Accordingly, the condition at paragraph B.2(a) is not satisfied.
9. The enlarged dwelling has since been entirely re-roofed with dark grey coloured tiles. However, that makes little difference to the findings set out above, as it does not alter how the existing dwelling is to be interpreted for the purposes of the GPDO. Moreover, similar considerations would still apply in respect of the contrast in the external finishes.
10. In any event, based on the limited evidence available I am also not persuaded that the dormer satisfies the size limitation at paragraph B.1(d). Other enlargements to the original roof space of the dwelling must be included when calculating the volume of the 'resulting roof space'. Having regard to the probable volume of those enlargements it seems to me more than likely that the volume of the resulting roof space exceeds by more than 50 m³ the volume of the original roof space following erection of the dormer. There is nothing before me which might show otherwise.
11. Development that does not comply with the relevant limitations and conditions in the GPDO is without planning permission. No grant of express planning permission in respect of the dormer following the submission of a planning

¹ Permitted development rights for householders Technical Guidance MHCLG September 2019.

application was drawn to my attention. At s171A(1)(a), the Act defines a breach of planning control as carrying out development without the required planning permission.

12. Consequently, the appellant has been unable to show that the dormer does not constitute a breach of planning control. The ground (c) appeal fails.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed.

Stephen Hawkins

INSPECTOR