
Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/N5660/X/22/3307482
95 St Julians Farm Road, London SE27 0RJ

- 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 Mr Alex Miles against the decision of the Council of the London Borough of Lambeth.
- The application Ref 22/02326/LDCP, dated 28 June 2022, was refused by notice dated 23 August 2022.
- 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 on the application form as the construction of a tile clad dormer to rear of property under permitted development regulations.

Summary Decision: the appeal is dismissed.

Preliminary matters

1. The Council's decision notice describes the proposal slightly differently, as simply 'the construction of a rear tile clad dormer'. There appears to me no substantive difference.
2. I informed the parties of my view that a site visit was unnecessary to my determination, and no-one dissented.

Main Issue

3. The main issue in the case is whether the Council's refusal to issue a certificate was well-founded. The principal points of dispute between the parties are whether the proposed works constitute an enlargement which joins the original roof to the roof of a rear or side extension; and if not then whether the eaves of the original roof are to be maintained or reinstated by the works.

Reasons

4. The Council accept that the proposed works amount to a roof enlargement potentially falling within the definition of development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order') and specifically by article 3 and Part 1 Class B of Schedule 2.
5. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The permission is subject to various restrictions such as those relating to the size or relative height of any works, and is also subject to a number of conditions.

6. These conditions include that the enlargement must be constructed so that, 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, the eaves of the original roof are maintained or reinstated.
7. The works proposed here do not directly link the property's existing roof forms with each other through the interpolation of another roof. The proposed extension rises vertically from the existing pitched and flat roofs, creating an additional storey to the dwellinghouse over part of it, with an additional independent flat roof above it. Because of this, I do not find that the enlargement would 'join' the original roof to the roof of a rear or side extension, as the 2015 Order requires in this context. Thus the exception granted by the relevant condition does not apply here.
8. As to whether the eaves of the original roof are to be maintained or reinstated, I am not expressly informed about the eaves of the original roof and whether they are the same as the existing. Nonetheless it appears that there is some slight overlap of the proposed works with the existing rear eaves at the eastern side of the proposed extension, meaning that I cannot be confident that the eaves of the original roof would be maintained. Therefore the condition of the 2015 Order would not be met, and hence I cannot certify that the proposed development would have been lawful on the relevant date.
9. Had I concluded otherwise, I would have sought further information from the parties as to whether what is proposed could reasonably be described as an addition or alteration to the roof of the dwellinghouse, to which Class B could apply. The proposed works appear to me more in the nature of the demolition of part of the roof to make way for an upwards extension that would not, on the information available to me, appear to meet the requirements of any other Class of the 2015 Order.

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 rear tile-clad dormer 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

11. The appeal is dismissed.

Laura Renaudon

INSPECTOR