



Appeal Decision

Site visit made on 8 February 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Appeal Ref: APP/M5450/X/22/3295639

Bramber, Porlock Avenue, Harrow HA2 0AP

- 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 Charish Dsouza against the decision of the Council of the London Borough of Harrow.
 - The application ref P/0261/22, dated 26 January 2022, was refused by notice dated 22 March 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 'building a single-storey side-extension that does not exceed half the width of the original dwelling'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development set out on the Council's decision notice differs to that provided on the application form, and a different form of words is provided by the appellant on the appeal form. I have therefore adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought.
3. In order for a LDC to be granted under s192 of the Town & Country Planning Act 1990, as amended, (the 1990 Act), the onus is on the appellant to demonstrate, on the balance of probabilities, that the development would have been lawful on the date of application.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposed extension would be permitted development, having regard to the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. The appeal property is a single storey detached dwelling with some accommodation in the roof space. Schedule 2, Part 1, Class A of the GPDO states that the enlargement, improvement or other alteration of a dwellinghouse is permitted development, subject to various limitations and conditions.

6. Paragraph A.1(j)(iii) states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would have a width greater than half the width of the original dwellinghouse. Paragraph A.1(ja) states that development is not permitted if any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j). The Council considers that the development as proposed, would fail to meet the aforementioned limitations because the extension would have a width greater than half the width of the original dwellinghouse, and on that basis the extension would not be permitted development.
7. The starting point for this assessment is to establish the extent of the 'original' dwellinghouse. The GPDO defines 'original' to mean, in relation to a building existing on 1st July 1948, as existing on that date, or in relation to a building built on or after 1st July 1948, as so built. This excludes buildings on Crown land.
8. The Council consider the width of the original dwellinghouse to be its flank walls, excluding a side extension granted permission in August 1949¹ and the garage, which replaced the pre-existing garage that was granted permission in March 1994 to increase the width of the garage. Once these elements are excluded, the Council calculate the width of the original dwellinghouse to be 7.3 metres. As the width of the proposed extension is 4.3 metres, the Council is of the view that this is greater than half the width of the original dwellinghouse. Nevertheless, the Council has provided no illustrative material to support the measurement it cites.
9. The appellant has provided a copy of the original plan that was approved as part of the 1949 planning permission. This shows the footprint and elevations of the property as it existed in 1949, including the previous integral garage. A measurement has been annotated on this plan to show the width of the dwellinghouse, including the integral garage, as being 8.75 metres.
10. While I have been provided with no evidence of when the property was originally constructed, it is likely that if the dwellinghouse existing on 1 July 1948 it would have included the integral garage as shown in the plans in August 1949 given the short interval of time between these two dates. Therefore, it can be taken that the extent of the 'original dwellinghouse' is that shown on the 1949 plan, which includes the integral garage, but excluding the side extension that was permitted at that time. Without any evidence to the contrary, it is this that forms the baseline against which any subsequent extensions and alterations should be measured.
11. Consequently, the width of the original dwellinghouse is established at 8.75 metres and therefore the proposed side extension, with a width of 4.3 metres, would not have a width greater than half the width of the original dwellinghouse, even when considered with existing enlargements to which it would be joined. It would therefore comply with the limitations set out in paragraphs A.1(j)(iii) and A.1(ja).
12. Nevertheless, paragraph A.1(k)(iv) of Schedule 2, Part 1, Class A states that development is not permitted if it would consist of or include an alteration to

¹ Planning Permission Ref. HAR/1926

any part of the roof of the dwellinghouse. But it is generally accepted that non-compliance with paragraph A.1(k)(iv) does not prevent the whole of the extension from being permitted development, it merely means that the development must also be assessed against the limitations and conditions set out in Classes B or C of Schedule 2, Part 1 of the GPDO.

13. This view is supported by the accompanying technical guidance² which confirms that when considering whether a proposal is permitted development all of the relevant Parts of the Order and all of the Classes within those Parts need to be taken into account. It states that changes to the roof of a house are not permitted development under Class A, but may be permitted under Class B or C. In this regard, the guidance is clear that, in order to be permitted development, a proposal must meet all the limitations and conditions under each Class relevant to the proposal. It is therefore essential that any proposed householder development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights.
14. On this point the appellant directs me to an example set out on page 9 of the technical guidance, which states '*where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development*'. However, this merely demonstrates the point that a proposed extension would need to meet the requirements of all relevant Classes and it does not explicitly exclude an assessment against Class B where it is considered to be relevant.
15. Class B permitted development rights relate to 'the enlargement of a dwellinghouse consisting of an addition or alteration to its roof' and Class C relates to 'any other alteration to the roof of a dwellinghouse'. In this case, the plans accompanying the proposal suggest that the roof of the proposed extension would physically join the roof of the dwelling above eaves level, and there is no clear evidence to demonstrate otherwise. It cannot therefore be discounted that this will require works to alter the existing profile of the roof and once complete would result in an enlargement of the dwelling, with an addition to its roof. Therefore, on the facts of the case, the proposal falls to be considered against the limitations and conditions set out under Class B rather than Class C.
16. Paragraph B.1(d)(ii) states that development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres. At paragraph B.3 'resulting roof space' is defined as meaning the roof space as enlarged, taking into account any enlargement to the original roof space.
17. The Council calculate that the proposed extension, together with previous additions to the roof space, would add 88.23 cubic metres to the volume of the roof, therefore exceeding the limitation set by paragraph B.1(d)(ii). The appellant does not dispute these calculations and offers no alternative evidence to demonstrate that the proposal would meet the thresholds set out in Class B.

² Permitted development rights for householders: Technical guidance, pages 8-9, published by the Ministry of Housing, Communities and Local Government, September 2019

Consequently, on the balance of probabilities, the proposed extension would not be permitted development.

18. In support of the appeal, the appellant has drawn my attention to a certificate of lawful development³ that was granted for a proposed single storey rear extension at the appeal site. In doing so, the appellant argues that the Council did not assess that proposal against the limitations and conditions set out in Class B and has therefore been inconstant in its approach. However, I do not have the full details of this other scheme before me, so I am unable to draw any comparisons with the appeal proposal. In any case, a grant of a LDC is dependant on the appellant demonstrating, on the balance of probability, that the proposed development would be lawful, regardless of how the Council may have determined other cases.

Conclusion

19. The appellant has not demonstrated, on the balance of probabilities, that the proposed extension would be permitted development, having regard to the provisions of GPDO. Therefore, it has not been demonstrated that express planning permission would not be required.
20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of building a single-storey side-extension that does not exceed half the width of the original dwelling 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.

J M Tweddle

INSPECTOR

³ Ref. P/5092/18