



Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/F5540/X/22/3308927
90 Cromwell Road, Hounslow RW3 3QJ

- 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 Reza Aboutalebi against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00323/90/LAW1, dated 15 June 2022, was refused by notice dated 30 August 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
- The development for which a certificate of lawful use or development is sought is a loft conversion with rear dormer and 2 no skylights in front roof slope and part first floor rear extension.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. On reviewing the appeal documents it appeared to me that the appeal was capable of determination without a site observation. The parties' views were sought and there was no dissent. Accordingly, I have not visited the site.
2. The Council's notice of refusal describes the proposed development slightly differently from that shown above (repeating the description found in the application form). The Council's description was of the erection of a rear roof extension incorporating two front roof windows and erection of a part first floor rear extension to the house. It appears to me that nothing turns on this difference.
3. The Council's decision notice describes itself as a 'Certificate of Lawful Use or Development' and purports to certify that the development as described by the Council is 'not lawful'. There is no scope in the 1990 Act for a local planning authority to certify what is not lawful; only what is. Nonetheless I treat the Council's document as, substantively, a notice of refusal.

Main Issues

4. The appeal is not concerned with the merits or otherwise of what is proposed. The dispute between the parties is whether the proposal already benefits from a grant of planning permission, by reason of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order') and specifically the permission conferred by article 3 and Schedule 2, Part 1, relating to developments within the curtilages of dwellinghouses.

5. The onus of proof on such applications lies on the appellant, to the standard of probability. The appellant must therefore satisfy me that it is more likely than not that the proposed development benefits from the permission granted by the 2015 Order.
6. There are two elements of the proposed development, but it has not been described to me whether or how these elements are severable. One concerns an extension to the main roof of the dwellinghouse. The other concerns an extension above an existing single-storey section of the rear outrigger. It is possible that, if not both, one or other element might benefit from the permission conferred by the 2015 Order, but I am not asked to consider issuing a partial certificate. As I am not informed as to the severability of the elements, I shall consider the proposals as a whole.
7. The main issue in the case is therefore whether the proposed works benefit from the permission granted by the 2015 Order. Specific aspects in dispute are whether the works to the rear outrigger would extend beyond the rear wall of the original dwellinghouse; and whether they would amount to an enlargement or other alteration to the roof of the dwellinghouse, thus benefitting from the permission conferred by Classes B or C.

Reasons

8. Photographs have helpfully been supplied of the property, an attractive Victorian attached house constructed of what appears to be London stock brick. A two storey outrigger protrudes to the rear, with a pitched roof symmetrical with that of its attached neighbour. Beyond that, the outrigger continues at the ground floor only, with an existing flat roof above it.
9. The bricks and coursing between the two parts of the outrigger appear very well matched, although it would be unusual to find a Victorian-era flat roof. One question arising under Class A of the 2015 Order (if that applies, which I will come onto) is whether, pursuant to paragraph A.1(h)(i), the enlarged part of the dwellinghouse would have more than a single storey and would extend beyond the rear wall of the original dwellinghouse by more than 3 metres. If it would, it would not be permitted by Class A.
10. The 'original dwellinghouse' in this context means the house as it stood on 1 July 1948, or as first constructed if afterwards. Although I cannot rule out the possibility of the flat-roofed section of the outrigger being a later addition to the original, it does appear to be of considerable vintage. Its use as a bathroom and WC is consistent with it having been constructed by the 1930s, by which time indoor plumbing was widespread. No planning history of the site has been supplied (or appears available to the parties) thus suggesting that the rear extension (if that is what it is) might pre-date post-war planning controls. Although conscious that it is for the appellant to prove this point, on balance I consider that the rear wall of the original dwellinghouse, as defined in the 2015 Order, is the rear wall of the existing flat-roofed outrigger, because it appears to me more likely than not that the house existed in its present form by 1 July 1948. Thus the proposed development would not extend beyond the rear wall of the original dwellinghouse (whether by more than 3 metres or at all) and so would not fall foul of the paragraph A.1(h)(i) prohibition.
11. A further restriction is however found in paragraph A.1(i), which stipulates that development is not permitted by Class A if 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. The proposal consists of erecting an additional storey atop the existing flat-roofed section of the outrigger. This would abut the neighbouring boundary, and the eaves to the new flat roof would exceed 3 metres. Thus if the proposed development is to be considered as falling under the description of what is permitted by Class A, namely the enlargement, improvement or other alteration of a dwellinghouse, it would not be so permitted because it would offend paragraph A.1(i).

12. Hence the need to consider the main area of dispute between the parties, which is about whether the proposal should be considered under Class A at all, or if the proposed first-floor extension to the outrigger should instead be considered under Class B. The appellant contends that the description of the permission conferred by Class A is not apt; but that the proposal instead amounts to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Such a permission is conferred by Class B. If the proposal can be so described, the Council have not identified any applicable restriction, meaning that it would be permitted development (as would the main roof works). Alternatively, Class C permits any other alteration to the roof of a dwellinghouse, again subject to restrictions that do not appear to apply here.
13. The description of the permission conferred by Classes B and C suggest that what one both begins and ends with is a roof; and that the existing roof must be added to or altered in some way. This is not applicable to what is proposed here. There is no alteration to the existing roof as such, except to obliterate its existing function; the proposal consists of constructing an additional storey on top of it, with vertical walls, and with an entirely new flat roof above that. This is not appropriately described as an alteration to the roof. Nor is it an addition to it. It is instead a vertical extension to the dwellinghouse replete with a new roof, and this is not aptly described by the permission granted by Classes B or C. It is captured by the description of the permission granted by Class A, but for the reasons I have given above it offends paragraph A.1(i) of that Class and hence is not permitted development.

Conclusion

14. 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 loft conversion with rear dormer and 2 no skylights in front roof slope and part first floor rear extension at 90 Cromwell Road, Hounslow 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.

Formal Decision

15. The appeal is dismissed.

Laura Renaudon

INSPECTOR