



Appeal Decision

Site visit made on 27 April 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/L5810/X/22/3296636

15 Lauderdale Drive, Petersham, Richmond TW10 7BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tom Kimbell against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 22/0580/PS192, dated 21 February 2022, was refused by notice dated 8 April 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 as "Construction of roof extension. No new hard standings. All works and storage of materials etc on site."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing development which is considered to be lawful.

Preliminary Matters

2. The Council officer did not arrive at the arranged time for the accompanied site visit. The appellant did arrive and I explained that if a council officer did not attend, I would consider whether I could continue to deal with the appeal without entering the site. No other discussions took place. I am satisfied that I could see a sufficient amount of the dwellinghouse from the street. I therefore can continue to make a decision without re-arranging the visit.
3. The submitted plans show other proposed works to the property in addition to the works to the roof. The description of the proposal only relates to the roof and that is the basis upon which the Council considered the application. The Council also revised the description as used in their decision as "construction of a roof extension and rear dormer window" which more succinctly describes the proposal. I will deal with the appeal in the same way.

Main Issue

4. The main issue is whether the Council's decision to refuse the LDC was well founded. The onus of proof in LDC cases is upon the appellant and the standard of proof is on the balance of probabilities. The planning merits of the proposal are not relevant to take into account.

Reasons

5. There is no dispute that the proposed roof extension would involve “development” which is defined by s55 of the Act as, amongst other things, “the carrying out of building, engineering, mining or other operations in, on, over or under land”. The dispute relates to whether the development proposed would have deemed consent by reason of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), Article 3, Schedule 2 and then any of the Classes in Part 1.
6. Firstly, and the most obvious class of the GPDO to apply is class B which approves the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. There are limitations to these permitted development rights but before considering those, it is necessary to consider whether the proposed operations would fall within the scope of being an addition or alteration which is the main disputed matter. In the absence of a definition within the GPDO of the terms additions and alterations, it is necessary to consider them in the ordinary sense of the words.
7. The dwelling at the moment has a pitched, fully-hipped roof on all sides along with an additional sloped-roof over the 2 storey bay at the front. The front elevation of the main part of the roof currently finishes in a point with a ridge back from there to the apex of the rear sloped roof. The proposal would involve changing the main roof to a half-hipped form along with a rear roof dormer and flat-topped crown. This would provide additional living accommodation within the roof-space.
8. The works to the roof would be extensive. However, that is not unusual when carrying out development under the provisions of the GPDO. It is clearly established that the demolition of a whole building and its reconstruction would not fall within any of the Classes of permitted development authorised by Part 1 of Schedule 2 to the GPDO. At the other end of the spectrum there are minor alterations and improvements to a building that would clearly fall within the developments deemed to have planning permission. This proposal falls somewhere in-between and it is a fact and degree judgement for me to make based upon the evidence before me. I agree with the logic in these respects of the legal opinion submitted by the Council which was not specific to this case but which is a useful analysis of how such matters may be approached.
9. The appellant confirms that some of the roof structure would remain. The covering would be removed and the felting replaced with tiles, the rooflights and a dormer then being installed at the rear. A plan has also been submitted which shows that the underlying structure of the front bay would not be affected directly by the proposal. Some of the roof timbers that presently form the front and rear roof-slopes would also be retained and propped during construction until other structural elements are installed. The side roof-slopes would include new roof timbers. Photographs have been submitted with the appellant’s submissions showing how new and old timbers can be integrated along with other internal structural elements. Furthermore, the walls of the house that would be enlarged and upon which the whole structure would continue to be supported, would remain.
10. Large elements of the existing roof of the dwelling would remain in place as would the supporting dwelling below roof level. As such, from the information presented it appears to me, as a matter of fact and degree, that the proposal

as specified can reasonably be considered as an enlargement of the dwellinghouse consisting of additions and alterations to the roof. The Council has referenced a number of appeals within their borough as well as others, where other Inspectors have reached different conclusions in those cases. I am not provided with all of the information submitted in those appeals or sufficient detail to know whether or not my judgement in this case is not consistent with theirs. The fact and degree judgement that I am making here is based upon what has been submitted in this appeal and only therefore confirms lawfulness of the works as specified.

11. There is no dispute by the Council that if I am to consider the proposal in this way, that the extent of the works would fall within the limitations of Class B. Again from the information submitted, I agree. As such, the development as specified would be permitted development not requiring planning permission.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a roof extension and rear dormer window, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

INSPECTOR