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# Appeal Decision

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 June 2023**

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**Appeal Ref: APP/N5090/X/22/3300495**

**11 Ravenscroft Avenue, Golders Green, Barnet, London NW11 0SA**

- 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 He against the decision of the Council of the London Borough of Barnet.
  - The application Ref 22/2044/192, dated 14 April 2022, was refused by notice dated 18 May 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 'Loft conversion with 2 no. of side dormers and 1 no. of rear dormer, to have two bedrooms, two bathrooms, and one storage, within the limits of permitted development. Refer to the drawings'.
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## Formal Decision

1. The appeal is dismissed.

## Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. The appellant submitted new evidence with the appeal which was not before the Council when it made its decision. Since s195(2) of the Town and Country Planning Act 1990 (1990 Act) refers to whether or not the Council's refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

## Main Issue

4. The main issue is whether or not the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn on whether the 'side dormers' described in my banner heading above were lawful as at the date of the LDC application. Planning merits are not relevant to the assessment and the onus is on the appellant to make their case on the balance of probability.

## Reasons

### *Legislative position*

5. Section 55 of the 1990 Act defines development requiring planning permission as including the carrying out of building operations. Subsection 191(2) of the 1990 Act states that operational development is lawful if: (a) no enforcement action can be taken in respect of those operations (whether because they did not involve development, or require planning permission, because the time for enforcement action has expired, or for any other reason).
6. Operations may therefore be lawful on the basis that planning permission has been granted in respect of them, including by deemed permission granted by Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('GPDO').
7. Schedule 2, Part 1, Class B of the GPDO grants planning permission for 'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof' subject to the conditions and limitations stated in that class. The Council does not appear to dispute that the rear dormer and rooflights would be PD and I have no reason to disagree with that assessment. The matter in contention is whether the 'side dormers' referred to in the application are PD under Class B.

### *The appeal property and the 'side dormers'*

8. The appeal property is a semi-detached dwelling located part way along Ravenscroft Avenue. It has a front gable projection stepping back to where the front door is located and where the building adjoins 9 Ravenscroft Avenue, forming an 'L' shaped frontage.
9. The side dormers would be positioned on the roof slopes which extend back from the front projecting gable, at a point behind the set back wall where the property adjoins No 9.

### *Analysis*

10. The Council accepted at application stage that the side dormers comply with all limitations in paragraph B.1. of Class B save for B.1.(c) which states that an enlarging roof alteration will not be PD if *'any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway'*.
11. The Government's Permitted development rights for householders Technical Guidance 2019 ('Technical Guidance') offers guidance on the meaning of this limitation stating that the effect of this is that *'that dormer windows...are not permitted development on a principal elevation that fronts a highway'*. The question is therefore whether the side dormers extend beyond the plane of any existing roof slope which forms a principal elevation that fronts a highway, rather than whether the roof slope itself directly fronts the highway.
12. As to the term 'principal elevation', this is not defined in the GPDO. However, the Technical Guidance states that *'in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house...It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house.'*

*Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house’.*

13. The principal elevation of the appeal property is that facing Ravenscroft Avenue since this contains the main architectural features, and includes both the front gable projection and the stepped back part of this elevation where the front door is located.
14. The roof slopes where the ‘side dormers’ are proposed to be positioned are physically and visually connected to the principal elevation, extending back from the projecting front gable. As such, whilst parts of these slopes sit behind the front elevation walls, nonetheless, these slopes form the principal elevation of the house which fronts a highway.
15. Indeed, the Technical Guidance explains that the principal elevation ‘*could include more than one roof slope facing in the same direction*’ for example where there is an ‘L’ shaped frontage, in which case ‘*all such roof slopes will form the principal elevation*’ and the line for determining development extending ‘*beyond the plane of any existing roof slope*’ will ‘*follow these slopes*’.
16. Following back the front projecting gable roof slopes, the proposed side dormers would consequently project beyond the plane of existing roof slopes forming the principal elevation of the dwellinghouse fronting a highway. Accordingly, there would not be compliance with B.1.(c), and so the ‘side dormers’ would not be PD.
17. The appellant highlights that the Council granted a LDC for a similar development at the adjoining property No 9 in 2014. Whilst I understand the need for consistency in planning decisions, the Council has indicated that the reason for the different decision is due to the Technical Guidance having been published after the date of that decision. I acknowledge the appellant’s comment that the text of Class B has not changed since the 2014 decision, however the Technical Guidance gives interpretative guidance as regards the GPDO as it would therefore seem that the Council’s position has changed in view of the interpretation in the Technical Guidance.
18. I am in any event required to base my decision on the GPDO as it existed at the time of the application, with advice from the Technical Guidance as appropriate. I note also the appellant’s comment that the appeal decision<sup>1</sup> referenced by the Council was for a ‘fundamentally different proposal’ but this does not alter my assessment in respect of the present proposal, which I have determined on its particular facts.
19. As to the planning merits of the appeal proposal as regards providing symmetry as between the semi-detached properties, such matters are not relevant in the context of a LDC appeal but rather would potentially be for consideration if the appellant were to make a planning application for the appeal development.
20. The Council during the course of this appeal also draws my attention to the fact that the windows to bedroom 6 as labelled on the ‘Proposed F1 & Loft Plans’ drawing are not annotated to indicate that these would be obscure glazed and

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<sup>1</sup> Ref: APP/G5180/X/18/3205879

non-opening/high level opening. It is argued thus that there would be a breach of condition B.2.(c). As such, even if the proposed development had complied with B.1.(c), I still could not have found it lawful in the absence of drawings indicating compliance with the B.2(c) condition.

21. Although it appears on the available evidence that the rear dormer and rooflights proposed would be PD, it is not possible to issue a LDC in respect of these aspects only per s193(4) of the 1990 Act since these operations are not physically separate and distinct proposals.

### **Conclusion**

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Loft conversion with 2 no. of side dormers and 1 no. of rear dormer, to have two bedrooms, two bathrooms, and one storage, within the limits of permitted development. Refer to the drawings' 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.

*V Bond*  
INSPECTOR