



Appeal Decision

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/W2465/X/22/3309222

32 Northfold Road, Leicester LE2 3YG

- 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 Dean Morgan against the decision of Leicester City Council.
- The application ref 20220901, dated 21 June 2022, was refused by notice dated 2 August 2022.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is described as a box dormer loft extension.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form. The Council, in its formal decision, describe the proposal as the '*Installation of two rooflights at front; dormer at side and rear of house (Class C3)*'. From the evidence before me, I consider this to be a more accurate description of what is proposed and have therefore dealt with the appeal on this basis.
3. I consider it has not been necessary to carry out a site visit in this particular case. This is because I have been able to reach a decision based on the documentary evidence submitted with the planning application and appeal.

Main Issue

4. The main issue is whether the Council's refusal to grant a LDC was well founded. This turns on whether the proposal would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) if begun on the date the application was made.

Reasons

5. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.
6. The decision is therefore based on the facts of the case and any relevant judicial authority. For the avoidance of doubt, this means that any planning merits are not relevant to this appeal. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development

proposed would have been lawful if begun on the date on which the application was made, that being 21 June 2021.

7. The appeal property is a semi-detached dwellinghouse with an existing hipped roof. The proposed development would consist of a hipped to gable roof extension and box dormer extending out to the side and rear facing roof slope, and the installation of 2 roof lights to the front facing roof slope.
8. Schedule 2, Part 1, Class B of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to various limitations and conditions. Class C of the GPDO permits other alterations to the roof of a dwellinghouse, subject to various limitations and conditions. Although the Council have referred to Class C in the decision notice, from the evidence before me the dispute between the parties is whether the proposed development would meet the relevant conditions of Class B.2(c)(i) and (ii).
9. The relevant condition set out at Paragraph B.2 "(c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be - (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed".
10. The Permitted development rights for householders: Technical Guidance (2019) states that windows for a loft extension on a side elevation of a house must be obscure glazed to benefit from permitted development rights. Glazing to provide privacy is normally rated on a scale 1-5, with 5 providing the most privacy. To be permitted development, side windows should be obscure glazed to a minimum of level 3. Obscure glazed does not include one way glass. The Technical Guidance also sets out that where such a window is on a staircase or landing the 1.7m measurement should be made from the stair or point on a landing immediately below the centre of the window, upwards to the opening part of the window.
11. In this case, the submitted plans 32NR-D-1, D-4, D-5 show a window for the loft extension inserted on the roof slope which forms a side elevation. The plans are not annotated to indicate that this would be non-opening or obscure glazed. The window would serve the loft extension positioned above the stairs / landing of the loft, and the submitted plan 32NR-D-2 does not show the window nor measurements from the point of the stair / landing below the centre of the window. Therefore, none of those submitted plans confirm that the window would comply with the conditions set out in B.2 (c) of the GPDO. I note that the application form states that the 'side facing window to be obscure', however this does not provide with any certainty which window or that it would be non-opening.
12. The submitted plan 32NR-D-6 relates to the technical specification of the proposed works to be undertaken. Although it details comments regarding windows there is nothing to clarify if this side window would be finished with obscure glazing or it would be non-opening. Moreover, it indicates that external windows are to be confirmed by the client/main contractor.
13. Therefore, it has not been demonstrated that the proposal would comply with the conditions set out in paragraph B.2 (c) of Schedule 2, Part 1, Class B of the GPDO.

Other Matters

14. The appellant has set out that the Council have an assumption that the rear fenestration does not match the existing house. However, from the evidence before me the Council have not refused to grant a LDC on this basis, and the evidence demonstrates it would meet the condition set out in Class B.2 (a) of the GPDO which requires '*the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*'. Nevertheless, this does not alter my findings in respect of Class B.2 (c).
15. In support of the appeal, the appellant has stated that if conditions relating to Class B.2 are required, they would be happy to add this annotation onto the drawings. I note that the Council's evidence has indicated there is a related application, although I do not have the full details of that application, those plans accompanying it appear to now be annotated. Nevertheless, I have not been presented with amended plans as part of the appeal and to show compliance with the conditions, and I must deal with the appeal on the basis of the evidence before me, and what was submitted to the Council on the date on which the application was made, that being 21 June 2021.

Conclusion

16. The appellant has not demonstrated, on the balance of probabilities, that the proposed development would be permitted development, having regard to the relevant provisions of the GPDO. Therefore, in the absence of an express grant of planning permission it has not been demonstrated that the proposed development would have been lawful if begun on the date the application was made.
17. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of the installation of two rooflights at front; dormer at side and rear of house (Class C3) 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.

K A Taylor

INSPECTOR