



Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 02 August 2023

Appeal Ref: APP/Z5060/X/23/3316448
145 Beccles Drive, Barking IG11 9HZ

- 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 S Kudhail against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 22/01800/CLUP, dated 25 October 2022, was refused by notice dated 21 November 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 a hip to gable roof conversion with rear dormer window and rooflights to the front roof slope.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Based on the evidence before me and the fact that this appeal is a legal determination based on the interpretation of permitted development rights pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) I have determined that a site visit is not necessary.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. That turns on whether the proposed development falls within Schedule 2, Part 1, Class B of the GPDO.

Reasons

4. The appellant contends that the Council incorrectly refused the application by failing to take into account the fact that when the previous property was extended and subdivided to form two separate dwellinghouses, this brought into being two new planning units (dwellinghouses) or two newly formed 'original' houses.
5. The proposed LDC relates to a dwellinghouse that was sub-divided as a result of a planning permission granted in 2015 under reference 15/00391/FUL for the erection of side porch and alterations to windows and doors on rear elevation in connection with sub-division of house into one two bedroom house and one three bedroom house. As permitted development rights for these

houses were not removed when planning permission was granted, it is argued that they benefit from full permitted development rights and the proposed development complies with the cubic content allowance for additions and alterations to the roof.

6. Condition B.1 (d) of Class B states that development is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case. According to Permitted development rights for householders – Technical Guidance September 2019 “original” means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date. The appellant considers that the 2015 planning creates a new built date for the purpose of interpreting permitted development regulations and therefore, both properties must be considered to benefit from full permitted development rights.
7. However, the appeal relates to the original part of the pair of semi-detached houses formed with 21 Westrow Drive. Furthermore, when calculating whether the additional roof space created increases the volume of the original house by 50 square metres, any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. ‘Original roof space’ will be that roof space in the ‘original building’. It is clear to me that the original building in plain terms is the building as originally constructed. Therefore, the resulting roof space means the roof space as it is proposed to be enlarged by the current proposal plus any enlargement of the original roof space that took place when the house was previously extended and altered under reference 11/00678/FUL and then sub-divided into two separate dwellings under planning permission 15/00391/FUL.
8. The sub-division did not give rise to the existence of a new building, but developed the existing building which effectively remains today; albeit in a much modified state. Since the current proposal for a hip to gable roof conversion with rear dormer window and rooflights to the front roof slope would take the overall increase the cubic content of the original roof space by more than 50 cubic metres, it cannot be permitted development.

Conclusion

9. 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 hip to gable roof conversion with rear dormer window and rooflights to the front roof slope 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.

A A Phillips

INSPECTOR