



Appeal Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/H5390/X/22/3303043

5 Snowbury Road, London SW6 2NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Dominic Kennedy against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application ref 2022/00923/CLP, dated 31 March 2022, was refused by notice dated 7 July 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 a 'mid-terrace house loft conversion'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Having considered all the submitted plans and documentation I concluded that a site visit was not necessary as it would not add to my understanding of the proposal. The parties were consulted but did not raise any objection.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. The main points of dispute between the parties are whether the proposed works constitute an enlargement which joins the original roof to the roof of a rear or side extension, and if not then whether the eaves of the original roof are to be maintained or reinstated by the works.

Reasons

4. Both parties accept that the proposed works amount to a roof enlargement potentially falling within the definition of development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and specifically by Article 3 and Class B of Part 1 of Schedule 2.
5. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The permission is subject to various restrictions such as those relating to the size or relative height of any works and is also subject to a number of conditions.
6. The parties dispute that the development would comply with condition B.2.(b)(i) of Class B. The relevant extract of the condition is as follows:

(b) the enlargement must be constructed so that—

(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves

7. The condition has been constructed so that requirements (aa) and (bb) only bite when the development is neither a hip-to-gable enlargement nor an enlargement which joins the original roof to the roof of a rear or side extension. Whilst it is readily apparent that the proposal does not include a hip-to-gable enlargement, the appellant considers that the enlargement joins the original roof to the roof of a side or rear extension.
8. The appeal property is a mid-terrace dwelling which shares its main roof ridge with the adjoining properties and encompasses what to my mind is the principal part of the original dwellinghouse. The property also includes an original two storey rear outrigger with a pitched roof set at a lower level to the main roof of the house. A rear or side extension is defined in B.4.(b) of Class B as including *'an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse'*. Accordingly, the fact that the rear outrigger is original is immaterial and for the purposes of condition B.2.(b)(i) it is classed as a rear extension.
9. Although described on the application form as a 'loft conversion', the submitted plans clearly detail that the proposal would include a dormer style roof extension. This enlargement would be added to the roof of the rear outrigger and would join the existing rear roof slope on the principal part of the dwellinghouse. The Council however state that the rear roof slope on the principal part of the dwelling is not the original roof, as it was replaced some years ago following the approval of planning permission¹ for the *'Erection of a rear roof extension and installation of two rooflights to the front roof slope, formation of a front lightwell, and alterations to the roof of the back addition'*.
10. From the evidence available to me, I am satisfied that the majority if not all of the rear roof slope of the principal part of the dwelling has previously been replaced. The pitch of the rear facing roof slope differs significantly from that of the front facing slope, and it also contains what is described on the submitted drawing² which details the proposed volume of the extension as an 'existing rear dormer'. The proposed enlargement, described on the same drawing as a 'side roof dormer' would join directly onto the 'existing rear dormer'.
11. Accordingly, no part of the development proposed would join the original roof of the dwellinghouse to the roof of a rear or side extension. For this reason, the enlargement proposed would not be exempt from requirements (aa) and (bb) of condition B.2.(b)(i) of Class B, which are set out above.
12. With regard to these requirements, I acknowledge that the development would retain the eaves of the rear outrigger and that the enlargement would not be

¹ Council Ref: 1991/01662/FUL

² Drawing No: 250 Rev A

less than 0.2m from them. It would not however retain the eaves of the original rear main roof slope, which on the evidence before me have already been removed to allow the construction of the existing 'rear dormer'. The Order does not inform or suggest that, where there are eaves at varying levels, one should be preferred over the other for the purposes of requirement (aa) of condition B.2.(b)(i). The requirement must, therefore, be read as applying to all eaves of the original roof of the dwellinghouse. Consequently, the development proposed fails to comply with requirement (aa) of condition B.2.(b)(i) of Class B.

13. Having regard to all of the above, I conclude that the development as proposed would not have been permitted by the GPDO if begun on the date the LDC application was made.

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 mid-terrace house loft conversion was well-founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

David Jones

INSPECTOR