



Appeal Decision

Site visit made on 31 August 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 October 2023

Appeal Ref: APP/B5480/X/22/3304362

19 Spenser Crescent, Upminster RM14 1AN

- 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 Jack Cook against the decision of London Borough of Havering.
 - The application ref D0149.22, dated 21 March 2022, was refused by notice dated 20 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: Proposed loft conversion under permitted development. Removal of pitched roof over the ground floor rear extension and the construction of a hip to gable roof, rear dormer window and roof lights. Retaining the front pitched dormer under previous planning application.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the refusal to issue a lawful development certificate is well founded. This requires consideration of whether the proposed works would constitute permitted development by virtue of Class B and Class C, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The onus is on the appellant to prove his case on the balance of probability.

Reasons

3. The original semi-detached dwelling was a small bungalow, with a half width projection to the front of the main footprint. The pitched roof was hipped back on the side. The bungalow was extended and now the dwelling has a loft conversion, with front dormer and a single storey rear extension with a pitched, hipped back roof and inset dormer at the back.
4. The proposed development, as described in the application, is set out in the bullet point above. The description in the appeal statement differs slightly in stating 'a hip to part gable extension to the side, the provision of a rear dormer window, the insertion of two rooflights to the front elevation and the removal of part of the existing roof.' The relevant plans are those listed on the Decision Notice.
5. The proposed works would involve the carrying out of building operations and would materially affect the external appearance of the building. The works would involve development and require planning permission. The appellant relies on permission being granted by article 3(1) of the GPDO by reason of the

development being permitted by Class B and Class C of Part 1 of Schedule 2 to the GPDO.

Class B: enlargement by an addition or alteration to the roof

6. Part 1 relates to development within the curtilage of a dwelling house. Class B permits "The enlargement of a dwellinghouse consisting of an addition or alteration to its roof."
7. The Council in its reason for refusing to issue a certificate states: 'The proposal includes the removal/demolition of the existing roof over the single storey rear extension with [the] result that the proposal could not be considered simply an enlargement or alteration to the original roof'.
8. The wording of Class B simply states 'an addition or alteration to its roof' and does not state 'original roof'. In Class B, and in other Classes of Part 1, where there is a qualification to be made, the wording does so explicitly, for example B.1.(b) refers to "existing roof" and B.1.(d) where there is reference to "original roof". The interpretation of Class B does not assist on this specific point. With these considerations in mind, I conclude works are not required to be restricted to the original roof.
9. The submitted plans show there would have to be substantial changes to the existing roof to provide the extra living accommodation in the roof space and ensure the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres. The Council's concern is removal of the roof would mean that very little of the roof structure would remain to be altered or added to. The Council was of the view that the proposal required a rebuild of the roof, not an alteration or enlargement.
10. This gives rise to whether the works involved in the proposed enlargement can be regarded, as a matter of fact and degree, as an 'addition or alteration' to the roof for the purposes of Class B.
11. By reference to comparison plans the appellant accepted that a significant amount of the external roof at the rear, and part of the side, would be extended/replaced. However, the appellant maintained the entire front part of the existing roof would remain unaltered and hence the proposal would amount to an alteration to the existing roof. Attention was drawn to an appeal decision (the North Mymms decision) where a similar issue was raised¹. In that appeal the Council's concern was that once the roof was substantially removed, it could no longer be added to or altered, and thus the works could not benefit from permitted development rights. The Inspector's reasoning referred to the submission of an outline schedule of works that explained to what extent the existing roof structure (i.e. that which existed prior to the works commencing) remained at particular stages of the process. The Inspector concluded there was no wholesale demolition of the roof; rather a series of progressive works to it. As a matter of fact and degree, it was considered that the nature and extent of the works did constitute additions and alterations to the roof.
12. No two proposals would be exactly the same and much depends on the facts of each case. This much is illustrated in the North Mymms decision where reference was made to other decisions where the substantial replacement of an existing hipped roof to provide a replacement roof incorporating gable ends

¹ Appeal ref APP/C1950/X/13/2207966, decision dated 19 January 2015

was not regarded as an 'addition or alteration' to it. Nevertheless, the decision is helpful in indicating matters for consideration.

13. There is no doubt that a hip to gable enlargement is a form of development that falls within Class B because this type of development is specifically referred to in condition B.2(b). The technical guidance² advises Class B covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows. Control on the scale of development is exercised through the limitations set out in B.1.
14. The current proposal involves a hip to gable enlargement to extend a previous loft conversion. The appeal statement outlined the process - the original ridge and structural supports would be retained, the side rafters removed, utilising the main supports. The front roof slope and projecting roof would not be altered, except to install the two front rooflights. However, a schedule of works was not provided by the appellant.
15. The proposed loft space extension would involve a substantial change to the existing roof, including the removal of the roof over the rear extension and back of the original bungalow. However, the baseline position is the existing roof and not the original roof before the construction of the extension. Elements of the existing roof would remain. As a matter of fact and degree the proposed loft conversion would fall within the scope of Class B, provided that the indicated progression of works was followed.
16. Development is not permitted if any of the stated limitations in B.1 apply. The appellant and the Council agree the proposal is not ruled out by reason of B.1. I note that the plans show the enlarged dwelling would not exceed the height of the highest part of the existing roof. There would be no extension beyond the plane of the existing roof of the principal elevation. The appellant has set out a calculation to show that the resulting roof space would be within the 50 cubic metres limit (total increase of 49.9 m³). The development is not ruled out by B.1.
17. To be permitted, the development must comply with the conditions in B.2. The appellant's appeal statement simply states 'complies' to each condition. The Council accepted that all the conditions stated in B.2 would be met. Proposed materials are stated on the plans. However, the proposal includes a small window in the side elevation, which would serve Bedroom 1 in the loft space. There is no annotation on the plans or reference in the Design and Access Statement to confirm that the window would be obscure glazed and non-opening³ to enable compliance with B.2.(c). In my view an assertion without confirmation in the submitted documents for the proposal is unsatisfactory.
18. In conclusion, the outstanding matters are a schedule of works and details of the proposed window in the side elevation. The Government's Planning Practice Guidance emphasises that an application must contain sufficient and precise information, otherwise a certificate may be refused. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to understand exactly what is involved. Precision in the terms of a certificate is vital so there is no room for doubt. In this case the development would have to be able to be specified in the First Schedule of

² Permitted development rights for householders – technical guidance updated 10 September 2019 Department for Levelling Up, Housing and Communities

³ The condition does set out a criterion to enable parts of a window to be opened.

the Certificate. Reliance on very brief, unsubstantiated comments in an appeal statement is not acceptable.

Class C: Any other alteration to the roof of a dwellinghouse

19. The proposal includes the insertion of two rooflights in the front plane of the roof. These elements fall to be assessed against Class C of Part 1 which permits 'Any other alteration to the roof of a dwellinghouse'. The appellant submitted the alteration would comply with the limits set out in C.1. The local planning authority did not disagree with this assessment.
20. C.1.(b) does not permit the alteration if it would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof (the technical guidance has an illustration of the requirement). No evidence has been submitted to show compliance. The submitted plans go no further than marking the position of the two rooflights. That being so I am unable to conclude the limitation is met.

Conclusions

21. The proposal is not described with sufficient precision to enable a certificate to be granted.
22. For the reasons given above and on the evidence available, the Council's refusal to grant a certificate of lawful use or development in respect of a proposed loft conversion, including removal of pitched roof over the ground floor rear extension and the construction of a hip to gable roof, rear dormer window and roof lights and retaining the front pitched dormer, was well-founded even though I have differed in my reasons. The appeal should not succeed. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Diane Lewis

INSPECTOR