



Appeal Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/Q5300/X/22/3298504
24 Livingstone Road, Southgate N13 4SD

- 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 Mrs L Sohawon against the decision of the Council of the London Borough of Enfield.
 - The application ref 21/04118/CEA, dated 28 October 2021, was refused by notice dated 18 January 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 'Proposed loft conversion and roof extension and with associated internal and external works'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs L Sohawon against the Council of the London Borough of Enfield. This application is the subject of a separate decision.
3. An application for costs was made by the Council of the London Borough of Enfield against Mrs L Sohawon. This application is the subject of a separate decision.

Procedural Matters

4. In an appeal under s195 of the Act the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. Consequently, no site visit was made as it was not necessary for me to view the property in order to determine the appeal.

Main Issue

5. The main issue is whether the Council's refusal to grant the LDC was well founded. That turns on whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

6. The appeal relates to a mid-terrace dwelling. The appellant contends that the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the GPDO which, subject to limitations and

conditions, permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. This includes condition B.1 which states:

(d) 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

7. The principal point at issue is the Council's determination that the proposal would not comply with paragraph B.1 (d)(i) of Part 1 of Schedule 2 of the GPDO because the resulting roof space would exceed the cubic content of the original roof space by more than 40m³.
8. The Council calculated from the submitted drawings that the resulting roof space would exceed the cubic content of the original roof space by 42.18m³, albeit this figure was subsequently amended to 41.3m³. The appellant however considers that the overall increase would be 39.78m³.
9. The application was determined based on submitted drawing numbers P/21/314/001, 002 and 003. However, all relevant measurements required to calculate the additional cubic volume were not marked on the plans. Furthermore, despite a box giving a total of 39.80sqm being shown on drawing P/21/314/003, no clear calculation of cubic volume was provided by the appellant. The drawings were also marked with "This document should not be scaled" resulting in further ambiguity.
10. The appellant's view that the increase in cubic content would be within the limit permitted is on the basis that a subsequent LDC application¹ (the 2022 application), which was made in relation to the same proposed development and using the same drawings, was granted on the 13 April 2022. In this application the Planning Officer concluded that the proposed development would be lawful as the resulting roof space would exceed the cubic content of the original roof space by 39.78m³.
11. The plans submitted in the 2022 application however contained additional information, including internal floor levels being shown, as well as floor to ceiling heights and further external measurements being clearly marked on the plans. These details were not available to the Council when determining the original LDC application subject of this appeal.
12. In the absence of this information, the Council sought to calculate the additional cubic content by measuring the relevant dimensions from the drawings using a digital measuring tool. Whilst the accuracy of these measurements cannot be guaranteed given that the drawings should not be scaled, it is nevertheless clear that the Council were not satisfied that the proposed development would meet condition B.1 (d)(i).
13. The burden of proof however is on the appellant. It is essential that the cubic content of any additional roof space does not exceed that permitted, and that it is clear how the volume calculations were obtained and that they are accurate. Based on the evidence provided, it was not demonstrated in a precise and unambiguous way that the proposed development would accord with limitation B.1(d)(i) of Class B. I therefore find, on the balance of probabilities, that the

¹ Council Reference: 22/00324/CEA

proposed development has not been demonstrated to be permitted development under Class B, Part 1 of Schedule 2 of the GPDO.

Other Matters

14. The appellant has stated that the decision notice for the 2022 application fails to correctly reference the drawings submitted in support of that application, and that she is concerned that it may impact on her ability to implement that proposed development. This matter however falls outside of the remit of this appeal.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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