



by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

Appeal Ref: APP/J4423/X/23/3322973

5 Delves Avenue, Sheffield, S12 4AA

- 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 and Mrs Paul and Laura Lambert against the decision of Sheffield City Council.
 - The application ref 23/00135/LD2, dated 16 January 2023, was refused by notice dated 22 February 2023.
 - 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 the proposed change from hip to gable roof and addition of rear dormer window to dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have determined this appeal without visiting the site, as all the relevant points and arguments are clear from the submitted representations, plans and photographs.

Main Issue

3. The main issue is whether the refusal of a LDC was well-founded, and the burden falls on the appellants to make their case on the balance of probabilities.

Reasons

4. This appeal turns on whether the proposal would constitute permitted development (PD), under the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO), if begun at the time of the LDC application.
5. The appellants say the proposal would be PD under Article 3(1) and Schedule 2, Part 1 Class B of the GPDO. This grants permission for, "The enlargement of a dwellinghouse consisting of an addition or alteration to its roof" subject to conditions and limitations. The Council accepts that the proposal meets all the requirements of Class B, except the limitation in B.1(c). This says development is not permitted if, "any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway."
6. Rainbow Place lies immediately to the east of the appeal dwelling, but Delves Avenue, the main highway, is to the south. The proposed hip to gable alteration would result in part of the dwellinghouse extending beyond the plane

of the existing roof slope on the Delves Avenue elevation. The determining question is therefore whether that forms the principal elevation.

7. The GPDO does not define "principal elevation", but I have regard to the guidance in 'Permitted development rights for householders - Technical Guidance', (the TG) published by the Ministry of Housing, Communities and Local Government in September 2019. This states that, "in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house."
8. Understandably, the appellants emphasise earlier pre-application advice. In March 2017, the Council said it considered the Rainbow Place elevation to be the principal elevation. It appears to have maintained that position in August 2022 when it indicated, though not in an LDC, that a hip-to-gable change and rear dormer would be PD, provided the volume did not exceed that specified in Class B. Furthermore, when granting planning permissions Ref 17/01920/FUL and 22/04075/FUL for extensions to the property in 2017 and 2022, the Council said that whilst the Delves Avenue elevation could be considered the principal elevation it was referred to as the side elevation for the purposes of those assessments.
9. However, the Council's previous pre-application advice is not binding. Moreover, identifying the principal elevation would not have been fundamental to the determination of the planning applications, whereas it is crucial in the context of the GPDO and this appeal.
10. Although the Rainbow Place elevation has more windows, it has no doors and faces the continuous high fence separating the garden of the appeal property from the grassed section of Rainbow Place. The Delves Avenue elevation features the main front door entrance to the dwelling, with a modest, partially enclosed porch. A path from that door links to the footway on the main highway serving the house. At this point, there is a gap in the high boundary fence, with just a low, pedestrian gate.
11. Some might consider the Rainbow Place elevation to be the front of the house. Nevertheless, having regard to the TG, the location of the front door and its relationship with the main highway, I am satisfied that the Delves Avenue elevation is the principal elevation, whether or not it should be described as the front. The proposal would not therefore be PD.
12. Achieving consistency in decision making is an important objective for local planning authorities and other decisions makers. In that context, the Council's earlier contradictory advice is unfortunate. Nevertheless, the best way to promote consistency is to follow the TG where appropriate, rather than maintaining a previous erroneous stance. The TG is readily applicable to this case.
13. The appellants speculate that, had they built the development on the strength of the Council's earlier advice, it is unlikely that enforcement action would have followed. The Council might not have judged it expedient to take enforcement

action, but that is not a matter for me, and it cannot affect my view on the lawfulness of the proposal.

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 the proposed change from hip-to-gable roof and the addition of a rear dormer window to the dwellinghouse 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.

J A Murray

INSPECTOR

