



Appeal Decision

Site visit made on 6 December 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/B4215/X/23/3327825
206 Moseley Road, Manchester M14 6PB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Kelso against the decision of Manchester City Council.
 - The application ref 136834/LP/2023, dated 28 April 2023, was refused in part by the Council by notice dated 6 July 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 a rear dormer extension.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In determining the application, the Council made a split decision. The proposed soil and vent pipe and single storey rear extension were deemed to be permitted development and therefore a certificate was granted for them, whereas a certificate was refused for the proposed rear dormer extension. The appeal before me is made against the Council's refusal to grant an LDC for the rear dormer extension. The description of the development in my banner header reflects this.
3. At the time of my site visit, the development had already been carried out. However, there is no evidence before me to indicate that the development was carried out prior to the submission of the LDC application. Furthermore, it is evident from the decision notice and appeal submissions that the Council determined the application on the basis of the information provided and not what has subsequently been built on site. Therefore, the appeal proceeds on the basis that the application was correctly made under section 192(1)(b) of the Town and Country Planning Act 1990 (the 1990 Act).
4. Notwithstanding the fact that works have already been carried out, it follows that I must determine whether the proposed rear dormer extension, as described in the banner header above and as shown on the submitted plans, would have been lawful at the time the LDC application was made.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC for the rear dormer extension was well-founded. This turns on whether the

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, as amended (GPDO).

Reasons

6. Subject to limitations and conditions, Class B, Part 1 of Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The appellant seeks to establish that the proposed rear dormer extension would be granted permission by virtue of Class B. Paragraphs B.1 and B.2 set out the limitations and conditions which proposals must meet in order to benefit from permitted development rights.
7. There is no dispute between the parties that the development would adhere to all of the limitations set out in paragraph B.1, and the conditions set out at paragraphs B.2(b) and (c). I find no reason to disagree with these findings.
8. The Council determined that the rear dormer extension would fail to comply with paragraph B.2(a) of Part 1 of Schedule 2. This states that "*the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*". The expression "similar appearance" requires a fact and degree judgement taking into account the appearance of the existing materials of the dwellinghouse.
9. The Government's Technical Guidance¹ provides a useful guide to interpretation of the GPDO. In the guidance for condition B.2(a) it states:

"This condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration. For example...

- *the face and sides of a dormer window should be finished using materials that give a similar visual appearance to the existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level."*

10. 206 Moseley Road is a mid-terrace brick built dwellinghouse. The front elevation of the property is painted red with its roof made up of slate tiles which are, when viewed from ground level, of greyish colour. The Council determined that the proposed development would fail to comply with paragraph B.2(a) as it would include "grey uPVC shiplap cladding" and "rendered cement board" which would not be of a similar appearance to the materials used in the construction of the exterior of the existing dwellinghouse.
11. The plans submitted as part of the LDC application are annotated to show that the proposed rear dormer extension would include "grey uPVC shiplap cladding". Whilst in principle I consider that it would be possible for such cladding to comply with paragraph B.2(a), other than a single sentence in the

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

covering letter dated 27 April 2023 stating that the cladding would be “of a similar appearance to the existing building”, little detail regarding the design or appearance of the proposed cladding is provided.

12. In any event, drawing number 7 dated “Amended Plan Feb 23” is also annotated with the words “rendered cement board”. This annotation has an arrow pointing to the external part of the proposed rear dormer extension that protrudes above the ridge of the two-storey rear outrigger. Since rendered cement board does not form part of the existing dwelling, I agree with the Council that its external use would not be of similar appearance to the materials used in the construction of the exterior of the existing dwelling.
13. The appellant however contends that the “rendered cement board” is a construction detail and not a facing material, and that when reading the application as a whole, the intention to clad the rear dormer extension with grey uPVC shiplap cladding is clear.
14. Section 192(2) of the 1990 Act states *“if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect, and in any other case they shall refuse the application”*. The Planning Practice Guidance² also advises that the applicant is responsible for providing sufficient information to support an application, and that in the case of applications for proposed development *“an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved”*.
15. Whilst it may not have been the appellant’s intention, when read on its face drawing number 7 indicates the external use of “rendered cement board” on a small section of the proposed rear dormer extension. Overall, the submitted plans and information do not clearly demonstrate that the proposed external materials would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. On the evidence before me, I am not satisfied that lawfulness has been established.
16. I therefore find that the appellant has not demonstrated, with sufficient clarity and precision, that the proposal as shown on the submitted plans would be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the GPDO and thus would have been lawful at the time of the application.

Other Matters

17. My attention has been drawn to other developments in the local area which the appellant considers are similar to the proposal and have been granted either planning permission or a LDC by the Council. The planning merits of a proposal are not relevant to the consideration of an appeal under section 195 of the 1990 Act, which relates to an application for a lawful development certificate. The decision rests on the facts of the case and on relevant planning law.
18. Though I note that one of the developments referred to by the appellant has been granted a certificate under section 192 of the 1990 Act, each application for a proposed development certificate needs to be assessed on its particular facts and site-specific circumstances. I have therefore determined this case on

² Paragraph:006 Reference ID: 17c-006-20140306

the facts before me and the developments referred to by the appellant do not alter my findings in relation to this appeal.

Conclusion

19. 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