



Appeal Decision

Site visit made on 10 January 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/W5780/X/22/3310639

82 Oaks Lane, Newbury Park, Redbridge, Ilford IG2 7PX

- 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 Mohammed Atikur Rahman against the decision of London Borough of Redbridge.
 - The application ref 2953/22, dated 6 September 2022, was refused by notice dated 7 October 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 with two side dormers and Juliette balcony.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made under s192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) and sought to establish whether operations proposed would be lawful.
3. For the purposes of the 1990 Act operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The onus lies with the appellant to make his case on the balance of probabilities.
4. I have noted the appellant's submissions on matters relating to character and appearance, the living conditions of neighbours, development plan policies and his personal circumstances, but LDC applications are determined on the basis of fact and law. Therefore, the planning merits can form no part of my assessment as to whether a LDC should be granted.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the proposed loft conversion with two side dormers and Juliette balcony would have been lawful on the date of the LDC application on the basis that they would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

6. The appeal relates to an extended two storey, semi-detached dwelling, situated on the corner of Oaks Road and Southdown Crescent. It has a pitched roof with existing dormer extension in the northern roof slope, which is smaller than that proposed to replace it. There are two roof lights and chimney stack in the opposite roof pitch where a second dormer extension is proposed. The property has an existing ground floor extension which wraps around the northern and eastern elevations.
7. Article 3 and Schedule 2, Part 1, Class B of the GPDO grant planning permission for the *enlargement of a dwellinghouse consisting of an addition or alteration to its roof*, subject to limitations and conditions.
8. Limitation B.1(c) states that development is not permitted by Class B 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'*.
9. The Council argues that the principal elevation is that which faces Oaks Lane. The appellant argues it is the elevation which faces Southdown Crescent.
10. MHCLG Technical Guidance¹ explains 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.*

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation'.
11. The drive and parking area for the appeal dwelling are positioned in front of the southern elevation and are accessed via a crossover from Oaks Lane. Oaks Lane is also the postal address for the property.
12. However, the main, and indeed sole pedestrian entrance from the public realm is situated in the ground floor extension, which wraps around the elevation facing onto Southdown Road. That entrance comprises double, decorative doors, with flanking light fixtures, and a doorbell on one side and a post box on the other. There is also a canopy above the door. The ground floor plan shows that the doors open into a porch and then into a hallway providing access to the rest of the house. The Southdown Crescent elevation therefore functions as the front of the house.
13. In terms of architectural features, there are five window openings in the elevation facing Southdown Crescent as well as the front door with canopy above. In contrast, the Oaks Lane elevation is largely blank save for two windows and the projecting chimney breast. The greater articulation is therefore in the Southdown Crescent elevation.

¹ Ministry of Housing, Communities & Local Government Permitted development rights for householders – Technical Guidance – September 2019

14. For the purposes of the GPDO, I therefore find that the elevation facing Southdown Crescent is the principal elevation of the dwelling on the basis that it functions as the front of the house and because it contains the main architectural features.
15. Accordingly, the proposed dormer extension in the roof slope facing Oaks Lane would not extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway, and thus would not be in breach of limitation B.1(c) of Class B.
16. The Council does not seek to argue that the proposal would conflict with any other limitation in paragraph B.1. Although paragraph B.1(e) states that development is not permitted by Class B if it would consist of a balcony, the Technical Guidance states that is understood to be a platform with a rail, balustrade or parapet projecting outside an upper storey of a building. The proposed Juliet balconies would not therefore be conflict with that limitation.
17. However, Class B condition B.2(c), states that *'any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.*
18. The Council state that the proposal does not comply because a Juliet balcony would be on a side elevation and openable. That would appear to contradict its view that the elevation facing Oaks Lane is the principal elevation. Nevertheless, the submitted plans annotate the elevation facing Oaks Lane as the side elevation and show the facing wall of the proposed dormer to include two sets of patio style doors, with flanking, full height windows behind Juliet balconies.
19. Although the Design and Access Statement indicates that any window facing the side would be obscure glazed and non-opening up to 1.7m, that is not reflected in the proposed floor plan which show both sets of patio doors to be fully openable. Moreover, there is nothing on those plans to indicate that the windows or patio doors would be obscure glazed. Indeed, the appellant's case appears to argue why such measures are not necessary in this case.
20. In that regard, I understand why the appellant argues that the windows would not affect the privacy of neighbours. However, the Technical Guidance for Class B is explicit in that it states that windows for a loft extension on a side elevation of a house must be obscure glazed to benefit from permitted development rights.
21. The failure to comply with condition B.2(c) would constitute a breach of planning control against which the Council could take enforcement action. The operations would not therefore be lawful for the purposes of the 1990 Act.
22. The appellant has sought to draw my attention to other similar applications which have been approved locally in Cambrian Avenue, Oaks Lane and Layswood Drive. However, I have no information as to why the Council determined those individual roof enlargements to be lawful and no specific evidence is provided to demonstrate that I should arrive at a differing conclusion on the lawfulness of that before me.

23. I understand that will be frustrating to the appellant because the photographs provided do show similar types of roof enlargement. Nevertheless, as noted, the evidential burden does lie with the appellant to make his case on the balance of probabilities. For the reasons explained, the photographs of the properties and the application references, do not achieve that.
24. The Council's reason for refusal also refers to Class C of Part 1 of Schedule 2, which covers other alterations to roofs, such as re-roofing or the installation of roof lights/windows. However, even if applicable, the development would be in breach of condition C.2, which is similarly worded to condition B.2(c) of Class B.
25. Accordingly, I find that the appellant has not demonstrated that the proposed development would have lawful at the time of the application, on the balance of probabilities.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a LDC 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.

Richard S Jones

INSPECTOR