



Appeal Decision

Site visit made on 11 June 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/Z0116/X/24/3340644

84 Kingshill Road, Knowle, Bristol BS4 2SN

- 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 Melissa Goddard against the decision of Bristol City Council.
 - The application ref 23/03985/CP, dated 26 September 2023, was refused by notice dated 31 January 2024.
 - 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 proposed hip to gable roof extension with a dormer.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The onus is on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a two storey, semi-detached dwelling. The dwelling has an elongated hipped roof form, which continues over part of the ground floor at the side. There is a single storey, pitched roof extension at the rear of the dwelling. The proposal entails erecting an extension at the side of the dwelling to form a gable roof, with a box dormer occupying most of the enlarged rear roof slope.
5. The proposal falls within the meaning of 'development' set out in s55(1) of the Town and Country Planning Act 1990 (the Act), which includes the carrying out of building operations in, on, over or under land. For the purposes of the Act, 'building operations' includes structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on a business as a builder.
6. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. At s191(2)(a), the Act states that operations are lawful where no enforcement action may be taken in respect of them. This includes for example, where the operations benefit from a grant of planning permission.

7. The GPDO at Article 3, Schedule 2, Part 1 grants planning permission for certain development within the curtilage of a dwelling. Class A grants permission for the enlargement, improvement or other alteration of a dwelling, subject to the limitations in paragraphs A.1 and A.2, together with the conditions in paragraphs A.3 and A.4, being satisfied where relevant. Class B grants permission for the enlargement of a dwelling consisting of an addition or alteration to its roof, subject to the limitations in paragraph B.1 and the conditions in paragraph B.2 being satisfied, where relevant.
8. For the purposes of Class B, an addition or alteration to the roof should not involve enlarging other parts of a dwelling. Part of the proposal however involves enlarging the dwelling at first floor level, by substantially raising parts of the external walls at the side and rear up to the height of the existing main eaves line. This would go beyond what could reasonably be described as merely an addition or alteration to the roof of the dwelling. By raising the external walls of the dwelling, the proposal would therefore involve works of enlargement which fall outside the scope of Class B. Such an enlargement would fall to be assessed against Class A. Consequently, I share the Council's view that the proposal should be assessed against both Class A and Class B and the relevant limitations and conditions set out therein.
9. The proposal would satisfy the size and locational limitations in Class A, set out in paragraph A.1(a) to (h), where relevant. Even so, paragraph A.1(j) restricts the size of an enlargement that would extend beyond a wall forming a side elevation of the original dwelling. By increasing the height of the dwelling above that of the original external wall at the side, the proposal would fall within the description in paragraph A.1 (j). Nothing in the wording of that paragraph suggests that it does not apply to an extension which, as in this case, would project upwards beyond the original side elevation of a dwelling. Since the proposal would exceed 4 metres in height as well as being more than a single storey, the limitations in paragraph A.1(j) would not be satisfied.
10. In any event, the proposal would not satisfy the limitation in paragraph A.1(i), being within 2m of the curtilage boundary and having an eaves height in excess of 3m. In addition, since part of the proposal involves altering the roof of the dwelling, the limitation in paragraph A.1(k)(iv) would not be satisfied.
11. The proposal would satisfy the conditions in paragraph A.3 of Class A, whilst the conditions in paragraphs A.2 and A.4 are not applicable in this instance. Be that as it may, by failing to satisfy the relevant limitations set out above the proposal cannot be permitted by Class A.
12. In relation to Class B, the proposal would not exceed the relevant limitations in terms of its height and location set out in paragraph B.1 (a) to (c), whilst subparagraphs (e) and (f) are not applicable in this case. The appellant calculated that the total volume of the proposal would be just under 45m³. Paragraph B.1(d)(ii) limits the increase in the volume of the resulting roof space over that of the original roof space to no more than 50m³ where, as in this instance, the dwelling is semi-detached.
13. Paragraph B.3 states that in Class B, 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by that Class or not. The Government's Technical Guidance¹, which assists in interpreting the provisions of the GPDO, advises that any previous enlargement to the original roof space in any part of the dwelling must be included in this volume allowance.
14. The original roof space of the dwelling has previously been enlarged, in the form of the pitched roof of the existing rear extension. Based on its size and

¹ Permitted development rights for householders: Technical Guidance September 2019

height, the existing extension roof is highly likely to have a volume in excess of 5m³. Therefore, the proposal would not meet the volume limitation in paragraph B.1(d)(ii), as the dwelling's resulting roof space would exceed that of the original roof space by more than 50m³.

15. The condition in paragraph B.2(b)(i)(aa) clearly states that the eaves of the original roof need not be maintained or reinstated where, as in this instance, a hip-to-gable enlargement is involved. There is nothing in this paragraph or elsewhere in Class B which would restrict the lengthening of the main eaves of the dwelling. Consequently, the condition in paragraph B.2(b) would be satisfied. Similarly, the conditions in paragraphs B.2(a) and (c) would be satisfied. Ultimately however, the failure to satisfy the volume limitation set out above means that the proposal cannot be granted permission by Class B.
16. My attention was drawn to two nearby residential properties where the Council recently issued LDCs for hip-to-gable extensions. In both cases, the properties originally had similar roof forms to the appellant's dwelling. Even so, in the absence of further details it is unclear whether the circumstances which led to the issuing of LDCs are comparable with those in this appeal. Moreover, whether an LDC should be issued is strictly a matter of fact and law. An LDC cannot be issued for the proposal simply because the Council have previously determined outwardly similar developments to be lawful.
17. The failure of the proposal to satisfy the relevant limitations in Class A and Class B that I have identified is in addition to those referred to by the Council in the reason for refusal and in their written submissions. However, for the reasons set out above it is necessary to assess the proposal against all the limitations and conditions in both Classes.
18. Therefore, on the basis of the available evidence and in the particular circumstances before me, the appellant has been unable to show that the proposal is granted planning permission by Part 1 of the GPDO. Development which does not meet all of the relevant limitations and conditions in the relevant Class or Classes cannot benefit from the planning permission granted by the GPDO. It follows that, in the absence of a grant of express planning permission, the proposal is not lawful for planning purposes.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed hip to gable roof extension with a dormer 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.

Stephen Hawkins

INSPECTOR