



Appeal Decision

Site visit made on 22 May 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/H5390/X/23/3324173

13 Grimston Road, London SW6 3QR

- 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 Thomas Papa against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application ref 2022/03398/CLP, dated 21 November 2022, was refused by notice dated 11 January 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 second floor rear extension to mirror neighbouring development.
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Decision

1. The appeal is dismissed.

Main Issue

2. 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

3. 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 second floor rear 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.
4. The Council determined that the proposed development would fail to comply with three of these conditions and limitations. The first of these is paragraph B.1(d)(i) which states that development is not permitted by Class B if:

(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
5. The appeal property is a mid-terrace dwelling which includes an existing rear roof extension, as well as a two-storey outrigger to the rear. The proposed development would be added to the roof of the two-storey rear outrigger and

would join the existing rear roof extension. The starting point is to consider what the original roof space is given that for the purposes of Class B “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by the Class or not.

6. The Council contend that the existing rear roof extension was not part of the property’s original roof space and have provided the planning history for the site, which includes a previous planning permission¹ being granted for the “Erection of a rear roof extension”. The appellant has not disputed that the rear roof extension was a previous addition to the property. Therefore, from the evidence before me, it appears clear that it was not part of the property’s original roof space. As a result, it needs to be considered as part of the resulting additional roof space.
7. The appellant has provided calculations which demonstrate that the cubic content of the roof space to be created by the proposed development would be 39.18m³. However, this volume does not include the additional roof space created by the previous rear roof extension which, given its size, would take the total cubic content significantly above the permitted maximum of 40m³. Consequently, the proposed development is not permitted by reason of the provisions of Class B.1(d)(i).
8. The Council also consider that the proposed development would fail to comply with condition B.2(b)(i)(aa) and (ii) of Class B which states:
(b) the enlargement must be constructed so that -

(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves

(ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.
9. This condition has been constructed so that requirements (aa) and (bb) only bite when the development is neither a hip-to-gable enlargement nor an enlargement which joins the original roof to the roof of a rear or side extension. It is readily apparent that the proposal does not include a hip-to-gable enlargement. In addition, the proposed enlargement would be built off the existing rear roof extension and would not therefore join the original roof to the roof of a rear extension. For this reason, the enlargement proposed would not be exempt from requirements (aa) and (bb).
10. With regard to these requirements, I acknowledge that the development would retain the eaves of the rear outrigger and that the enlargement would not be less than 0.2m from them. Nevertheless, it would not retain the eaves of the

¹ Council Ref: 2001/01648/FUL

original main rear roof slope, and therefore, the development proposed fails to comply with requirement (aa) of condition B.2(b)(i) of Class B.

11. Additionally, as the enlargement would not join the original roof to the roof of a rear or side extension, and as it would extend beyond the rear external wall of the original dwellinghouse, the proposed development would also fail to comply with requirement B.2(b)(ii) of Class B.
12. The appellant's primary case is that the proposed development would result in an extension that would be virtually identical in terms of size and appearance to an existing extension at 14 Grimston Road. In particular, the appellant considers that irrespective of the process, order of events, and type of application, the proposal should be supported given the existence of the extension at No 14. However, in an appeal under s195 of the Act the planning merits of the matter applied for do not fall to be considered.
13. The development fails to meet the requirements set out in paragraphs B.1(d)(i), B.2(b)(i) and B.2(b)(ii). The limitations and conditions set out by the GPDO are not 'negotiable' and if they are not all met then what is proposed is not permitted development and planning permission is required.

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 a second floor rear extension 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