
Appeal Decision

Site visit made on 23 July 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities, and Local Government

Decision date: 08 August 2024

Appeal Ref: APP/U2235/X/23/3327083

3-5 Bower Place, Maidstone, Kent ME16 8BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tunji Salami against the decision of Maidstone Borough Council.
 - The application Ref 22/501583/LDCEX, dated 25 March 2022, was refused by notice dated 23 February 2023.
 - The application was made under section 191(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 hip to gable loft conversion with rear dormer and 4 no. roof lights to front.
-

Decision: the appeal is dismissed

Procedural matters

1. The Council cited three reasons for refusal in its formal Decision notice. The third reason for refusal alleged that the works are not within the curtilage of a dwellinghouse and for that reason are not permitted by Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, having considered further the evidence submitted by the appellant, the Council indicated in its appeal statement that it would not be seeking to contest this reason for refusal. Accordingly, I have not considered that reason for refusal any further.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

3. It is convenient to consider each of the two remaining reasons for refusal individually first before drawing them together in a conclusion.

Reason for Refusal 1

4. The reason for refusal is, in summary, that the application fails to demonstrate due to inaccurate plans and ambiguity that the roof works to numbers 3 and 5 Bower Place would accord with Class B, Part 1, Schedule 2 of the GPDO. I have some sympathy with the Council's position in this respect.
5. Compared with the building as existing at the time of my site visit, there are some clear discrepancies between the application drawing¹ and the development as built. For example, the shape/size of the window openings on the ground and first floor of the existing side elevation to 5 Bower Place do not correspond with the application drawing. Similarly, the alignment of the door and the first and second floor windows above in that elevation are incorrectly shown on the application drawing. Moreover, the application drawing does not depict the detailing above the doors and windows. All of these discrepancies and omissions reduce the reliance that can be place on the application drawing.
6. However, the application drawing is not the main issue here. The application drawing is internally consistent. Notwithstanding the defects and omissions with the application drawing highlighted above, it would have been possible to construct the development entirely in accordance with that drawing. The main issue is that the hip to gable loft conversion with rear dormer has not been built in accordance with the application drawing. I turn to this below in relation to the second reason for refusal.

Reason for Refusal 2

7. The reason for refusal is, in summary and to paraphrase, that the existing development would not comply with Class B.1 (b) and Condition B.2 (a) of Part 1, Schedule 2 of the GPDO, insofar as the works may have exceeded the height of the highest part of the original dwellinghouse and the materials used are not similar in appearance to the original dwellinghouse. There are therefore two key elements to this reason for refusal: the height of the dwellinghouse as enlarged, and materials used.

Height of the dwellinghouse as enlarged

8. As the Council point out, the ridge line indicated on the application drawing does not relate correctly to the relationship with the rear dormer, neither in relation to the second-floor side window nor its width. There are two possible explanations for this: either the ridge height is higher than shown on the application drawing or the rear dormer is lower.
9. In my judgment, it is the former. As constructed, the flat ridge (or crown) is narrower than shown on the application drawing, one explanation being that the roof height has been constructed higher than shown on the application drawing. As built, that there is a narrow section of the roof between the eaves of the roof and the base of the dormer, as shown on the application drawing. Conversely, as built, there is a narrow section of roof between the top of the dormer and the ridge of the roof that is not present on the application drawing, the top of the dormer being shown as flush and contiguous with the crown.

¹ Drawing No 1394/1 dated March 2022

Furthermore, the gap between the second-floor side windows and the ridge of the roof is greater than shown on the application drawing.

10. Taking these elements together suggests that roof has been raised rather than lowered to achieve the narrower crown roof. For that to have happened, given that the dimensions of the first floor of the building have not changed, the corollary must be that the pitch of the roof has been increased. I have not been provided with surveyed drawings showing a direct comparison of the pitch of the roof as built compared with that before the works took place. In that context, the appellant has failed to discharge the burden of evidence that is upon him.
11. The appellant maintains that the gable ridge follows the lateral line of the original roof, and the geometry positions it below the original ridge line. However, that is not supported by the photographic evidence or my site visit. A comparison between the eaves detail of the roof before the works took place² and the eaves details of the roof as constructed³ shows a very different appearance to the eaves detail.
12. A photograph of the gable end to 3 Bower Place under construction⁴ shows a new timber beam in place. In my judgement, from the angle from which the photograph was taken, the original roof ought to be visible but it is not. The implication is that the original roof may have been entirely removed at some point during construction.
13. Another photo purports to show the rear dormer under construction⁵. The photograph appears to show the timber framework for the dormer resting on the ridge of the original roof. Moreover, the rafters visible in the photograph are vertical, whereas the as built gable is pitched. Consequently, if the vertical timber rafters visible in the photograph are the framework for the dormer, then the roofing felts visible in the photograph are inside of that framework, such that they would have been replaced and/or the pitch steepened in order to provide the narrow strip of roof to the sides of the dormer that is visible in the 'as built' photograph.
14. These photographs collectively tend to suggest that the roof has been raised in relation to the original roof and/or that the original roof has been completely replaced. Other photographs provided as part of the appellant's case only show part of the roof as existing or under construction, and for that reason are not of assistance in determining the height of the roof. I therefore conclude, on the balance of probability, that the height of works exceeds the height of the highest part of the original dwellinghouse and for that reason does not accord with Class B.1(b), Part 1, Schedule 2 of the GPDO.

Materials used

15. Development is permitted under Class B, Part 1, Schedule 2 of the GPDO subject to the condition at Class B.2(a), which states that development is permitted subject to the proviso 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.

² Submitted as part of the appellant's initial appeal documents.

³ Ibid

⁴ Page 4 of the appellant's Statement of Case.

⁵ Page 6 of the appellant's Statement of Case.

16. The Permitted development rights for householders: Technical Guidance (Technical Guidance) indicates that Condition B.2(a) 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* (emphasis added). The Technical Guidance goes on to explain that 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 Technical Guidance indicates that the visual impacts of the materials used will be the most important consideration. In relation to dormer windows, the Technical Guidance explains that the face and sides of a dormer window should be finished using materials that give a similar visual appearance to the existing house and that 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.
17. The appeal property is constructed in brickwork that is brown in colour. There are details on the building constructed in stone, such as the lintels over the windows and doors, as well as the quoins on the corners of some elevations. The roof of the 'original' two-storey outrigger to the rear is constructed of tiles, also brown in colour. The works to the roof pre-date the construction of the later single-storey rear extensions, and therefore at the time the roof works were carried out there was no render on either dwellinghouse.
18. The Technical Guidance is explicitly clear in that the expectation is that materials should be of similar colour and design. The cream rendered material of the gable ends and face/flank of the dormer is similar in neither colour nor design to the materials used in the construction of the existing house. The lighter coloured stonework features are not a principal material used in the construction of the dwelling and these provide no justification for widespread use of the light-coloured render material used on the gable ends and face/flank of the dormer.
19. It is also no defence to argue that the ground floor extension forms a dominant feature and is rendered/painted. That extension is a later addition to the property, and itself is constructed from materials that do not have a similar visual appearance to the existing dwelling in terms of colour. Likewise, it is no defence to argue that other properties in the vicinity are finished in materials that are similar to those used on the hip to gable loft conversion with rear dormer. The provisions in Class B.2(a) of the GPDO, and explained in the Technical Guidance, relate solely to the dwelling to be enlarged.
20. Because of the materials used on gable ends and the face/flanks of the dormer, the hip to gable loft conversion with rear dormer has a jarring visual impact that is not sympathetic to the existing house when viewed from ground level. In particular, the materials used for facing the rear dormer are not of similar colour and design to the materials used in the main roof of the house. For those reasons, the hip to gable loft conversion with rear dormer conflicts with the single most important consideration set out in the Technical Guidance.
21. I conclude, as a matter of fact and degree, that the materials used in any exterior work are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. I therefore conclude that the hip to gable loft conversion with rear dormer and 4 no. roof lights to front does not accord with Class B.1(b), Part 1, Schedule 2 of the GPDO.

Other matters

22. In his appeal statement, the appellant provides a number of appeal decisions relating to various aspects of development permitted by Class B, Part 1, Schedule 2 of the GPDO. I have read and understood all those decisions. However, whilst those decisions are helpful in setting out the approach to be taken in considering these types of development, the outcome of each decision invariably turned on the facts and circumstances in that particular case. Those facts and circumstances are site specific and, by definition, are different to the facts and circumstances in this case. For that reason, those appeal decisions are of limited assistance to me and I have focused on the development that is before me.

Conclusion

23. I conclude that, on the balance of probability, the hip to gable loft conversion with rear dormer at 3-5 Bower Place, Maidstone, Kent ME16 8BG is not permitted by Class B, Part 1, Schedule 2 of the GPDO. This is not because the application drawings are inaccurate to the point of being ambiguous but because, as a matter of fact and degree, the development was not constructed in accordance with those plans. Moreover, it is because the appellant has failed to demonstrate that the development as carried out is itself permitted by Class B, Part 1, Schedule 2 of the GPDO. Consequently, the appellant has failed to show that, on the balance of probability, the development would have been lawful on the date on which the application was made.
24. 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 should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Freer

INSPECTOR