



Appeal Decision

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/H5960/X/24/3338806

25 Swaffield Road, Wandsworth, London SW18 3AH

- 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 Ms Martha Wilson against the decision of the Council of the London Borough of Wandsworth.
 - The application ref 2023/4211, dated 8 November 2023, was refused by notice dated 17 January 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ("the Act").
 - The development for which a certificate of lawful use or development is sought is the demolition of existing rear dormer and erection of a roof extension above two storey rear addition.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have determined this appeal without carrying out a site visit because I have been able to reach a decision based on the information already available.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

4. An application under s192(1) of the Act seeks to establish whether any use or operations proposed to be carried out in, on, over, or under land would be lawful. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
5. The appeal property is a two-storey, mid-terrace single dwellinghouse with an existing dormer roof extension to the main rear roof slope. A single and two storey extension has also been added to the rear of the dwelling.
6. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") grants planning permission for the classes of development described as permitted development in Schedule 2 of the GPDO. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse.
7. Class B of Part 1 permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof and any other alteration to the roof of a dwellinghouse. Class C of Part 1 permits any other alteration to the roof of a dwellinghouse.
8. The parties dispute relates to Class B and whether, as a result of the proposal, the cubic content of the resulting roof space would exceed the cubic content of

the original roof space by more than 40 cubic metres paragraph B.1(d).

9. The GPDO confirms that the term 'original' means a building as it existed on 1 July 1948, where it was built before that date, and as it was built if built after that date. This is also confirmed in the Technical Guidance for permitted development rights for householders (Technical Guidance), which assists in interpreting the GPDO. The Technical Guidance explains 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 this Class or not. It also confirms that 'original roof space' will be that roof space in the 'original building'.
10. Therefore, to be permitted development, any additional roof space created must not increase the volume of the original roof space of this terraced house by more than 40m³. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. Paragraph B.1(d) does not provide for offsetting an increase in the volume of the resulting roof space where the volume limit would otherwise be exceeded.
11. In this case, the original roof space has already been enlarged. Therefore, although the proposal would re-use some of that enlargement, that enlargement needs to be included in the assessment of whether the resulting roof space would be greater than 40m³ compared to the original roof space. The Technical Guidance is clear on this point, as it says 'any part of the house must be included in this volume allowance'.
12. The Council calculated the volume of the resulting roof space would be 64.47m³, including the existing enlargements. The appellant does not dispute the accuracy of this figure, and I have no reason to either.
13. Even though I have no reason to doubt that the appellant would demolish the existing dormer extension, my determination of this appeal is based strictly on the evidential facts and on relevant planning law. The planning merits of the matter applied for are not considered in an appeal under s195 of the Act. Further, my determination relates to the appeal property and not any other application relating to another address.
14. Therefore, I conclude that, on the balance of probability, the appellant has not shown that the proposal would be granted planning permission by the GPDO by Article 3(1), Schedule 2, Part 1, Class B of the GPDO as the proposal would not accord with the limitation set by paragraph B.1(d)(i). Any compliance with Class C does not change this. Hence, in the absence of a grant of express planning permission subsequent to the submission of an application, the proposal would not be lawful for planning purposes. I am not aware that such a permission has been granted.

Conclusion

15. For the reasons given above I conclude that, the Council's refusal to grant a certificate of lawful use or development in respect of the demolition of existing rear dormer and erection of a roof extension above two storey rear addition that refusal was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andrew McGlone

INSPECTOR