



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 26 November 2024

Appeal Ref: APP/B5480/X/23/3329814

262 Wennington Road, Rainham RM13 9UU

- 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 June Chanain against the decision of the Council of the London Borough of Havering.
 - The application ref E0017.23, dated 3 May 2023, was refused by notice dated 28 June 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 loft conversion with rear dormer.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application to establish whether development carried out like this is lawful or not does not require any consideration of planning merits such as the effect of the development on the character and appearance of the area or potential effects on neighbours living conditions. Therefore, there was no need to see the site for these reasons. Moreover, the outcome of the appeal depends on interpreting the conditions and limitations of the planning permission granted for the enlargement of a dwellinghouse that includes additions or alterations to its roof under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This also did not require a visual site assessment.
3. Also, even though the appellant stated that a site visit was needed to measure the volume of the roof addition, for reasons I will explain below that was also not necessary. In all the circumstances, a site visit was not required. Neither side has been prejudiced by me not visiting the site.
4. In lawful development certificate appeals, the burden to make out the case rests with the appellant. The test of the evidence is the balance of probability.

Main Issue

5. The main issue is whether the Council's decision was well founded.

Reasons

6. Schedule 2, Part 1, Class A of the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse. Development is not permitted though if the enlarged part of the dwellinghouse

would extend beyond a wall forming a side elevation of the original dwellinghouse and would exceed 4 metres in height. In this case, it is clear based on the planning permission history for the appeal property and considering the photographs supplied by the Council, that the house has already had a two-storey side extension. The hip to gable part of the proposal and at least some the rear dormer has extended beyond the original side elevation. In addition, the height of both elements has exceeded 4 metres.

7. Furthermore, under Schedule 2, Part 1, Class B of the GPDO, the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development provided that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case. In this case the house is semi-detached and so the upper 50 cubic metres applies.
8. However, 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. Therefore, any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. The appellant states that the volume added to the roof is less than 50 cubic metres. However, there is nothing to show whether that figure includes the previous roof space created when the earlier two storey extension was added. The appellant has not discharged the burden on them to show that the 50 cubic metres threshold has not been breached. It is not my place to make out the case for the appellant by taking on site measurements.
9. In the view of the above, on the balance of probability, the loft conversion with rear dormer is not development permitted by the GPDO.

Conclusion

10. For the reasons given, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion with rear 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).

Gareth Symons

INSPECTOR