

Appeal Decisions

Site visit made on 20 November 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Appeal A Ref: APP/G5180/X/23/3320853

23 Crowhurst Way, Orpington BR5 4BW

- 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 [hereinafter referred to as "LDC"].
 - The appeal is made by Dr Mercy Doni-Kwame against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/03804/PLUD, dated 28 October 2022, was refused by notice dated 30 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 described as '*Change of roof formation to accompany the loft conversion at 23 Crowhurst Way.*'
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Appeal B Ref: APP/G5180/X/23/3320854

25 Crowhurst Way, Orpington BR5 4BW

- 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 [hereinafter referred to as "LDC"].
 - The appeal is made by Dr Mercy Doni-Kwame against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/04366/PLUD, dated 4 November 2022 was refused by notice dated 31 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 described as '*Change of roof formation to accompany the loft conversion at 25 Crowhurst Way.*'
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Costs Application

3. An application for an award of costs was made by Dr Mercy Doni-Kwame against the Council of the London Borough of Bromley. This application is the subject of a separate decision.
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Background, and the proposals at issue

4. In terms of the planning history of nos 23 and 25, permission ref 19/02994 was granted in 2019 for a part one/part two-storey rear extension and side elevational alterations. A subsequent application termed as a non-material amendment to the permitted scheme involving, amongst other things, an alteration to the rear roof profile to provide additional accommodation within the loft space was refused in 2021.
5. A further joint application (ref 22/00512) was then made which proposed changing the roof from a valley form to a gabled ends. This was refused due to the design, scale and bulk of the proposed roof profile being considered a dominant and unsympathetic addition.
6. Subsequently, the proposals for both dwellings, the subject of the current appeals were submitted by separate applications and, with the applicant claiming neither required planning permission, LDCs, under s192 of the 1990 Act (as amended) were requested. The proposals involved adjoining rear dormers which would create, in the Council's description, a mansard roof appearance. These would be of identical form and design to the extent that any differences between them would be so insignificant as to be de minimis in planning terms.

Appeals A and B

Main Issue

7. The main issue is whether the Council's decision not to issue the LDCs was well founded.

Reasons

8. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decisions on the various evidence before me.
9. The matter to be decided upon is whether the development, if carried out at the date of the applications ie 28 October and 4 November 2022, respectively, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO) as subsisted at the time of the application.
10. The Council's case is that the roof enlargement proposals would fall outside the parameters of Class B, Part 1, Schedule 2 of the GPDO.
11. Class B, B.2(b)(i)(aa & bb) says that the enlargement shall be constructed so that the eaves of the original roof are maintained or reinstated, and that the edge of the enlargement closest to the eaves of the original roof shall, so far as is practicable, be not less than 0.2m from the eaves, measured along the roof slope from the outside edge of the eaves.

12. The reference to the 'original roof' is important, and the appellant's point that a new roof was approved is immaterial. Moreover, no such setback from the eaves is proposed here. The eaves have been removed and the development would effectively create a third storey whose rear wall would be flush with the outside wall directly below.
13. Class B, B.2(b)(ii) goes on to say that, 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.
14. In this instance, whilst the enlargement does extend beyond the an outside wall of the original dwellinghouse, the applicability of the first part of the proviso is open to interpretation. Given, though, that the conflict I have described in paragraph 11 is obvious it is not necessary that I explore this additional matter further. Accordingly, I am concentrating wholly on the fact that the dwellings' original eaves have been removed and, as there is no intention here to reinstate them, the required separation of 0.2m cannot be achieved.
15. The appellant disputes the Council's reference to a 'mansard roof'. However, the terminology is not determinative as the only material consideration here is whether the intended roof enlargement satisfies **all of** the Class B provisos.
16. I have had regard to all the appellant's representations, including a previous appeal decision cited where the Inspector comments that materials used in a roof enlargement should be of similar visual appearance to those used in the existing house, but nothing raised circumvents the fact that the proposal fails to overcome the stated Class B B.2(b)(i)(aa & bb) restriction.

Conclusion

17. Accordingly, I find that the Council's decisions were well founded as the benefit of planning permission is lawfully required to construct the development proposed.
18. For the reasons given above I conclude that, on the evidence available, the appeals should not succeed. Accordingly, I shall exercise the powers transferred to me under section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR

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