



Appeal Decision

Site visit made on 7 January 2025

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2025

Appeal Ref: APP/Y1110/X/24/3339762

92 Latimer Road, Exeter EX4 7JP

- 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 Adam Raud against the decision of Exeter City Council.
 - The application ref 23/1285/LED was dated 19 October 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 rear dormer constructed at the property, where the dormer walls were finished with render.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form includes reference to the dormer window having been constructed in 2021, and that render is present on the building and within the main roof area. As these do not describe the development itself, I have omitted that information from the description in my heading, above, but have had regard to it in reaching my Decision.
3. The appellant's statement refers to wasted expense in making applications to the Council. However, there is no explicit or formally made application for costs, or demonstration of unreasonable behaviour in the appeal process. Therefore, I have not considered this matter any further.
4. The main issue is whether the Council's decision to refuse the application was well-founded. The onus is on the appellant to prove their case to the standard of the balance of probabilities.

Reasons

5. Insofar as it is relevant to this case, section 191(2) of the Town and Country Planning Act 1990 as amended ("the 1990 Act") provides that operations are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
6. The appellant claims that the dormer window benefits from the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").

7. Schedule 2, Part 1, Class B of the GPDO confirms that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is 'permitted development', so long as it does not breach any of the limitations set out at Paragraph B.1. The Council has not suggested that any of those were breached. Rather, the disputed issue is whether the condition at Paragraph B.2.(a) of Schedule 2, Part 1 has been complied with. That requires 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.
8. The Government's 'Permitted development rights for householders Technical Guidance' ("the Technical Guidance") advises that the condition is intended to ensure that any addition results in an appearance that minimises visual impact and is sympathetic to the existing house, and that the visual impacts of the materials used will be the most important consideration. Therefore, the analysis of appearance within the Council's officer report does not indicate that their consideration was an application of policy over legislation.
9. The Technical Guidance goes on to provide clear advice that 'the face and sides of a dormer window should be finished using materials that give a similar visual appearance to the existing house. So 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'.
10. The appellant has suggested that use of the word 'should' rather than 'must' means that rigid adherence to similar materials is not required. However, that claim is unsupported by substantive evidence, and so I see no reason that the word 'should' means anything other than that the stipulation needs to be followed. In any event, the word 'must' is used in the condition set out in the GPDO, so on the balance of probabilities, I find that materials of similar appearance are required to comply with the condition.
11. While there is render within the front elevation bay window and associated roof-level gable of the dwellinghouse, that is not a material used within the 'main roof of the house' as described in the guidance. Moreover, it is in a different elevation that cannot be seen alongside the dormer window when viewed from ground level.
12. Viewed in the context of the Technical Guidance, the condition requires the vertical sections of the dormer to be of a similar appearance to those used in the main roof of the house, but the grey render is a stark contrast to the tiles used there. There is a vertical section of rendered wall where the ridgeline of the terrace steps up between Nos 92 and 93. However, that section of wall appears to be the exterior of No 93, which is at the higher level. It has not, therefore, been shown that, on the balance of probabilities, render has been used in the exterior of the existing dwellinghouse at No 92 to which the development relates. In any case, like the front gable, it is part of the wall and not the material of the 'main roof'.
13. I note that the appellant is willing to consider an alternative colour finish to the development. However, in this type of appeal, I am unable to consider possible alternatives that may make the development comply with the relevant condition. I must confine my determination to the narrow matter of whether the development constructed is lawful. It has been suggested that a more lenient interpretation has been applied by this and other Councils at other sites, but I have no specific

examples to illustrate such similarities. In any case, I have determined this appeal on the facts of this case with regard to the legislation and relevant guidance.

14. For the reasons given, the materials used in the exterior work of the rear dormer are not of similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Therefore, the development does not comply with the condition at Paragraph B.2.(a) of Schedule 2 to the GPDO and, so, does not benefit from the planning permission granted by the GPDO. There is no other reason given that it might not need planning permission and the evidence suggests that none has been granted. Accordingly, it is not lawful within the meaning of Section 191(2) of the 1990 Act.

Conclusion

15. With regard to the foregoing, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a rear dormer constructed at the property, where the dormer walls were finished with render, 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).

M Bale

INSPECTOR