
PLANNING APPEAL

APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

for

**CONVERSION OF ROOF SPACE TO HABITABLE USE TO INCLUDE A REAR
DORMER WITH JULIET BALCONY, 2 FRONT ROOF LIGHTS AND CONVERSION OF
ROOF FROM HIP TO GABLE END WITH NEW GABLE END WINDOW**

at

**128 PINE GARDENS
RUISLIP
HA4 9TH**

Planning Reference 19544/APP/2022/2423



T R Harris (Design & Surveying Services)
559 Rayners Lane Pinner Middlesex HA5 5HP
www.trharrisdesign.co.uk Tel. 07957 619812

Prepared by: Tim Harris

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DOCUMENTATION

This report is to be read in conjunction with drawings 22/128PG/01, 02B & 03 that were submitted in relation to this appeal. Reference is also made to previous Planning Inspectorate Appeal references:

APP/Q5300/X/01/1062324

APP/5720/C/05/20045639

APP/U5930/X/10/2132832

APP/N5090/X/09/2108111

APP/M5450/X/17/3173114

Each of these appeals bear relevance to the case in question.

BACKGROUND & INTRODUCTION

The proposal is primarily for a loft conversion, including the provision of a box-dormer to the rear roof slope and two roof-lights located on the front roof slope.

The application was received by the council on 1st August 2022, with a decision not being issued until 1st December 2022. An extension of time was agreed until 10th October 2022.

SCHEDULE OF REASONS **REFUSAL OF PLANNING PERMISSION FOR** **CERTIFICATE OF LAWFUL DEVELOPMENT**

Refusal was given on the following grounds:

The proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015. because the proposed development would encroach on the neighbouring property and not remain within the curtilage of the dwellinghouse.

In summary, the issue appears to be the raising of the party wall where the new wall straddles across the notional boundary located at the centreline of the party wall.

You will note from the e-mail trail that every effort was made to provide the council with unequivocal evidence to demonstrate why the proposals comply with the provisions of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 and were provided with copies of all of the previous

Appeals that are cited above. These were sent by email on 22nd September 2022, along with minor amendments to the plans.

Given the available evidence, it is questionable how the council have managed to arrive at their decision.

GROUNDNS FOR APPEAL

In terms of demonstrating compliance, reference is made to the CLG Publication, Permitted Development Rights for Householders (Technical Guidance) dated September 2019. These guidelines provide a full interpretation of the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) as amended by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.

Roof extensions fall under Class B and the specific requirements are summarised below, with a commentary underneath each of the restrictions. For completeness all of the stipulations under the GPDO are considered:

B.1 Development is not permitted by Class B if –

a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 2 of this Schedule (change of use)

There is no change of use proposed and this clause is therefore not relevant.

(b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof

There is no part of the proposed alterations that will be raised above the roofline so this clause is not relevant.

(c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway

Alterations to the front will only include the provision of roof-lights, so this provision is complied with.

(d) the cubic content of the resulting roof space would 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

This is a semi-detached property and is therefore restricted to the 50m³ limit. The volume of the box-dormer is illustrated and calculated on the drawings and is therefore way within tolerance.

(e) it would consist of or include –

- (i) the construction or provision of a verandah, balcony or raised platform, or***
- (ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe***

Under the guidance, a balcony is understood to be a platform with a rail, ballustrade or parapet projecting outside an upper storey of a building. A 'Juliet' balcony, where there is no platform and therefore no external access, would normally be permitted development. Therefore, the Juliet balcony in this instance would still fall within Permitted Development.

(f) the dwellinghouse is on article 2(3) land

This is not relevant to this particular case.

Further conditions are made for compliance with Class B Development. These are summarised as follows:

B.2 Development is permitted by Class B subject to the following conditions –

(a) the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse

Materials have been specified to match the existing, so far as practicable.

(b) the enlargement shall be constructed so that –

- (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –***

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof all, so far as practicable, be not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and

- (ii) 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***

In terms of requirement (i), the eaves have clearly been maintained on the drawings with the minimum 200mm dimension shown at the eaves. Point (ii) is also complied with as the alleged encroachment referred to does not relate to an external wall.

Further restrictions are given under Class C, as follows:

C.1 Development is not permitted by Class C if –

a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (change of use)

There is no change of use proposed so this clause is not relevant.

(b) the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof

This is relevant to the roof-lights at the front, where we have specified a maximum projection of 150mm although in practice, the projection will be much less than this using a standard Velux window.

(c) it would result in the highest part of the alteration being higher than the highest part of the original roof; or

This clause is not relevant to this application.

(d) it would consist of or include-

(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment

The above clauses are not relevant to this application.

REASONS GIVEN FOR REFUSAL

Given the foregoing, it is demonstrated that all aspects of the design have been considered in the context of the GPDO. The council state that '*the proposed development would encroach on the neighbouring property and not remain within the curtilage of the dwellinghouse*'.

This therefore hinges on what is the legal definition for the curtilage of a site or property. From the previous Appeals referred to, there is an established history of both case law and established practice on this subject, which the council have ignored.

PREVIOUS APPEALS

The principal of raising party walls has clearly been accepted by the Planning Inspectorate on numerous occasions in the past, with decisions supported by case law, .

The key consideration is what, by definition, falls under the curtilage of a property. Throughout each of these appeals, reference is made to case law on the subject and what defines a curtilage. There is a consistent interpretation that the curtilage between adjoining properties, may in fact overlap and would be the case where a party wall is concerned. Relevant case law in this instance would be *Methuen-Campbell v Walters* [1979], *Dyer v Dorset CC* [1988], *Attorney-Gen ex rel Suttcliffe & others v Calderdale MBC* [1983], and *McAlpine v Secretary of State for the Environment* [1995].

In summary, the GDPO does not define 'curtilage'. The only definition available is given by the CLG guidance which states:

“Curtilage” - is land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.

Therefore, although the legislation may have changed over the years, the legal interpretation of what constitutes the curtilage of a property remains the same.

SUMMARY & CONCLUSIONS

The detail given above demonstrates that the application, as submitted, fully complies with Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO), and the associated guidance given by the CLG Publication, Permitted Development Rights for Householders (Technical Guidance) dated September 2019.

The council have failed to acknowledge previous Appeals and relevant case law, which was provided to them as part of the application process. Based upon the evidence provided, their interpretation is clearly incorrect. The Appeal decisions referred to only serve to reinforce the interpretation of the legislation that raising a party wall should be considered permitted development under the GDPO guidelines.

Given the foregoing, we ask that the Appeal be upheld.