



Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10TH NOVEMBER 2023

Appeal Ref: APP/R5510/X/23/3314443

44 Mount Pleasant, Ruislip, Hillingdon HA4 9HG

- 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 Alan Rock against the decision of the Council of the London Borough of Hillingdon.
 - The application ref 46943/APP/2022/3062, dated 6 October 2022, was refused by notice dated 1 December 2022.
 - 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 the conversion of roof space to habitable use to include a rear dormer, 2 front rooflights and conversion of roof from hip to gable.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Appeal Form as it provides a more concise description than that outlined on the original planning Application Form. I am satisfied that the appeal can be determined on the evidence before me, and no site visit was necessary. Both parties were made aware of this and provided time to respond. No further comments were raised with respect to the determination of the appeal without a site visit.
3. The plans supplied with the application show a hipped roof to a gable roof extension, with a flat roofed rear dormer and rooflights to the front roof plane. For the Lawful Development Certificate (LDC) to be granted under s192 of the Town and Country Planning Act 1990 it is necessary for the appellants to demonstrate, on the balance of probability, that the development would have been lawful. The date of the application is the relevant date for determining whether the development would be lawful, which is 6 October 2022.
4. Planning merits and matters such as planning policies and the effect of the development on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and the application of judicial authority.

Main Issues

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the conversion of the roof space was lawful on the date of the application, and considering whether the proposal amounts to development works that are permitted by Article 3, Schedule 2, Part 1, Classes B

and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. ('the Order').

Reasons

6. The existing dwelling comprises a detached house, finished in white render. The existing roof is a hipped roof with a ridge line that extends from the front to back of the roof.
7. The Council has referred to Case Law¹ that considered that the differences between works that amount to maintenance or reconstruction, which must be based on the matter of fact and degree. In *Larkin* it was considered that where new external walls had been constructed to replace part of the original dwelling, the construction of the said walls were not works of maintenance, improvement, or other alteration of a building since the original building had virtually ceased to exist. Having regard to *Larkin*, the Council argue that the works would not amount to an addition or alteration, but a substantial part of the existing roof being demolished and a considerable reconfiguration and rebuild of the roof form. To this end, they claim the works go beyond an enlargement, consisting of an addition or alteration to its roof.
8. With the above in mind, the proposed works would significantly alter the shape, form and design of the roof structure as well as changing the orientation of the ridgeline. In this regard, and based on the evidence submitted with the appeal, carrying out the proposed works as a single building operation would no doubt lead to little, if anything, of the existing roof structure remaining. I therefore concur with the Council and conclude that the works would amount to a new roof structure rather than an enlargement of the existing roof. In this respect, the provision of a new roof goes beyond what would be permitted by Classes B and C, as they only permit the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
9. Notwithstanding the above, even in the event that the development was considered to be an addition or alteration to a dwellinghouse roof, Condition B.2 (b) of Class B of the GDPO states the enlargement must 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 is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.
10. It is recognised that the proposed development involves a hip to gable loft conversion, but it also proposes a rear dormer. As such, although the hip to gable element could be compliant with the above, the rear dormer would be contrary to these conditions. In particular, the rear elevation of the dwellinghouse would be extended to form the rear dormer, completely removing the rear section of the existing roof and its eaves. As such, the eaves at the rear of the original roof would not be maintained or reinstated. For similar reasons, the loss of the original eaves means there would be no rear roof slope, therefore, the dormer would not be more than 0.2m from the eaves.

¹ Street v MHLG & Essex CC [1965] 193 EG 537 and Larkin v SSE & Basildon DC [1980] JPL 407

11. Condition B.2 (ii) also states 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 should extend beyond the outside face of any external wall of the original dwellinghouse.' Based on the plans submitted with the appeal, this is not a case where the enlargement joins the original roof to the roof of a rear or side extension. Further to this, the plans show the rear dormer extending beyond the face of the rear external wall of the original house.
12. I have had regard to Class C of the Order, and from the evidence before me, the works to insert the rooflights into the front roof slope would comply with the requirements set out in Class C (C.1) and (C.2) of the Order. However, as I have concluded that the works would be contrary to the requirements of Class B, compliance with Class C would not alter the final decision.
13. Consequently, for the purposes of the Order, the proposal contravenes paragraphs B.2 (b) (i) and (ii) of Class B. On the balance of probability, it has not been demonstrated that at the time of the application, the development would have been permitted by Article 3, Schedule 2, Part 1, Class B of the Order.

Other Matters

14. The appellant has referred to examples of similar developments on the street, including 28, 29, 34, 38, 40, 45 and 55 Mount Pleasant. However, I do not have the full details of these cases, so it is difficult to directly compare. In this respect it is likely that the proposed developments, circumstances, and other physical factors in those cases are not the same as the appeal before me.
15. In any event, my determination is also made solely on matters of fact, planning law, and application of judicial authority. As such, the existence of similar developments in the locality, approved via an LDC or planning application, would not alter my decision. Furthermore, the fact that the proposal would not adversely impact on the street scene or does not impact on privacy also has no bearing on my assessment of the lawfulness of the development.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of the conversion of roof space to habitable use to include a rear dormer, 2 front rooflights and conversion of roof from hip to gable 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. P. Howell

INSPECTOR