



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/R5510/X/23/3332344

148 Judge Heath Lane, Hillingdon, Hayes, UB3 2PF

- 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 Jay Akhuj, SK design Consultant against the decision of the Council of the London Borough of Hillingdon.
 - The application ref 59789/APP/2023/2348, dated 4 August 2023, was refused by notice dated 5 September 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 conversion of roof space to habitable use to include a rear dormer with 3 front roof lights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. Whilst both parties state that the application was submitted on 7 August 2023, I consider that for the purposes of this appeal, the date should be 5 August 2023 which is the date shown on the application form.
4. The application form does not include a description of the proposed development. It is clear from the submissions that development for which the LDC is sought is for the 'conversion of roof space to habitable use to include a rear dormer with 3 front roof lights' as described by the Council in its decision notice. The Council dealt with the proposal on this basis and so shall I, as s191(4) of the 1990 Act allows for modification of the description. No injustice will be caused to either party.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

6. The appeal relates to a semi-detached property. The Council contends that the proposed development would not be permitted development (PD) because it

would not comply with the provisions of Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

7. Class B provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted subject to conditions.

Condition B.1. (d) states: - development is not permitted by Class B if 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.

8. The appellant has made no written submissions regarding Class B of the GPDO. Having regard to the submitted plans, the calculations of the 'volume of the gable' and the 'volume of the rear dormer' agree with the Council's calculations in its delegated decision document. In addition, the Council has provided calculations of the 'roof to side extension.' The appellant does not dispute these calculations.
9. In this particular case, in order to be PD any additional roof space created must not increase the volume of the original roof space by more than 50 cubic metres. The roof space of the two-storey side extension did not form part of the original roof space and as such, must be included in the calculations.
10. The Council indicates that the total volume of the resultant roof space amounts to 63.48 cubic metres. Thus, the proposed development would exceed 50 cubic metres and would not be permitted development by virtue of Class B of the GPDO.
11. On the evidence available to me and having regard to all other matters raised, I find that, as a matter of fact and degree, it has not been shown that on the balance of probabilities the proposed development would be PD falling within Class B of the GPDO.

Other Matters

12. I acknowledge the appellant's comments regarding nearby loft conversions, the gable frontage, and the increased accommodation the proposed development would afford. However, such considerations are not relevant in a LDC application which is a matter of law and not a matter of judgement.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the conversion of roof space to habitable use to include a rear dormer with 3 front roof lights 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).

Elizabeth Jones

INSPECTOR