



Appeal Decision

Site visit made on 27 October 2010

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 November 2010

Appeal Ref: APP/C1950/X/10/2133094

'Ambleside' 51 Kentish Lane, Brookmans Park, Hatfield AL9 6NG

- 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 (LDC).
 - The appeal is made by Luciano Capaldo against the decision of Welwyn Hatfield Borough Council.
 - The application ref. S6/2010/1121/LU, dated 27 May 2010, was refused by notice dated 12 July 2010.
 - 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 raising of the side roof to the same level as the rest of the house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

3. The proposal is to raise the flat-topped hipped roof over the two-storey extension to the southern end of the house to the same height as the roof over the main body of the house. The information provided with the application included plan, elevation and sectional drawings of the house as existing, and as it would appear with the raised section of roof.
4. Class B of Part 1 to Schedule 2 of the GPDO¹ permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to a number of restrictions set out in paragraph B.1. I concur with the Council's view that the only restriction this proposal might transgress is (c)(ii) – that development is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres.
5. The two-storey side extension to the house was built following the grant of planning permission in 1998². This included the flat-topped hipped roof, which must itself be seen as an addition to the original roof. It follows that the entire

¹ The Town and Country Planning (General Permitted Development) Order 1995 as amended

² Planning permission ref. S6/1998/1112/FP.

- volume of the extension roof must be taken into account in assessing whether the proposed addition falls within the 50 cubic metre volume limit.
6. In their delegated report recommending refusal the description of the proposal includes the information that the height of the roof would be raised by a further 1.14 metres. However, in calculating the volume of the proposed extension to the roof space, the Council use a dimension of 1.24 metres for the increase in height. In this context, the Council note in their report that *'the scale bars on the submitted plans are slightly off scale and that the volume measurements have taken this into consideration'*. On the evidence submitted it must be assumed that the dimensions used in the Council's calculations take consideration of the discrepancy.
 7. In relation to an application made under Section 192 of the Act³, sub-section (2) states that if the Local Planning Authority are provided with information satisfying them that the use or operations described in the application would be lawful if begun at the time of the application, they shall issue a certificate; and in any other case they shall refuse the application. Furthermore, paragraph 8.26 to Annex 8 of Circular 10/97⁴ makes clear that in making a Section 192 application the burden of proof is firmly on the applicant. He will have to describe the proposal with sufficient clarity and precision to enable the Local Planning Authority to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission he wishes to make to satisfy the Authority that a LDC should be granted.
 8. In this case, the appellant submitted drawings at a scale of 1:100 that show no relevant dimensions. The Council had apparently been informed that the intention was to raise the height of the roof by 1.14 metres. However, their calculations had taken account of the discrepancy in scale discussed above. It is not realistic to expect accurate dimensions to be taken from drawings of the scale provided, and in any case it would have been possible to provide accurate site dimensions. In my view it was not possible for the increase in volume to be accurately assessed on the basis of the information provided with the application, which lacked the degree of precision that might reasonably be expected.
 9. Immediately following issue of the decision the appellant contested the Council's calculations, principally by reference to the stated intention to raise the roof by 1.14 metres and also to a previously refused LDC application for a similar scheme⁵. These later assertions by the appellant may be correct. However, his objections rely upon information that did not form a part of the application now before me. Furthermore, the apparent discrepancy between the increase in height stated, and that understood by the Council to be shown on the drawings is not resolved.
 10. Overall, I do not consider the appellant submitted an application describing his proposal with adequate clarity or precision. As a result the Council made their decision on the basis of their assessment of somewhat indeterminate information. In the light of this I consider the Council's refusal was well-founded.

³ The Town and Country Planning Act 1990 as amended.

⁴ Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements'.

⁵ Decision notice ref. S6/2010/0691/LU.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

Stephen Brown

INSPECTOR