Appeal Decision

Site visit made on 6 December 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2019

Appeal Ref: APP/Z5060/X/18/3197842

34 Bull Lane, Dagenham RM10 7HA

- 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 (hereinafter “certificate”).
- The appeal is made by Mr Raheel Shah against the decision of the Council of the London Borough of Barking and Dagenham.
- The application ref. 17/02011/CLU_P, dated 30 November 2017, was refused by notice dated 22 February 2018.
- The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
- The proposed development for which a certificate is sought is described at section 8 of the application form as "Permitted development to form 6 meter (sic) ground floor extension and part single storey extension and the permitted development of the dormer to form 2 habitable bedrooms".

Decision

1. The appeal is dismissed.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful by reason of immunity from enforcement action.

3. A certificate is not a planning permission and the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.

4. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is the balance of probabilities.

5. The description of the proposal in the heading above is taken from the application form. I should clarify that what the appellant describes as the “part single storey extension” would be at first floor level above part of the proposed (rear) ground floor extension.

6. The Council’s decision notice is not dated but the appellant indicates on the appeal form that the decision was dated 22 February 2018.

7. The parties agreed at the site visit that the location plan (drawing no. A100) in my possession was incorrect. I have therefore disregarded it and relied on the
other drawings showing existing and proposed floor plans and elevations.

Main issue

8. The main issue is whether the proposed development would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter “GPDO”) on the date of the application.

Reasons

9. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse.

10. No. 34 Bull Lane is a 2-storey dwellinghouse situated at the end of a short terrace. The Council determined that as the proposed ground floor rear extension would have a depth of 6 metres, it would fall foul of the limitation within Class A at paragraph A.1 (f) (i) of the GPDO. The relevant restriction there is that a single-storey extension should not extend beyond the rear wall of an original terraced dwellinghouse by more than 3 metres. I concur with the Council’s approach.

11. A single-storey rear extension up to 6 metres in depth as proposed could be considered here under paragraph A.1 (g) of the GPDO but this is subject to the prior approval procedure set out in the condition at paragraph A.4. The requirement to seek prior approval is imposed as a pre-commencement condition. There is no provision for a retrospective grant of prior approval. A certificate cannot be granted for the proposed development under section 192 if the prior approval condition has not been complied with by the date of the application. The appeal property did not have formal prior approval for a larger home extension as such.

12. The Council also determined that the 2-storey (or first floor) part of the proposed rear extension (shown to be 3 metres deep) would be within 2 metres of the shared boundary with 32 Bull Lane and have a maximum eaves height in excess of 3 metres. From my reading of the plans this is evidently correct, so there would be a failure to meet the limitation at paragraph A.1 (i) of the GPDO.

13. I agree with the Council that there would a failure to meet limitations applying to such development, so that the proposed development would not amount to permitted development and would not benefit from the planning permission granted through the GPDO. On the balance of probabilities, I find that the proposed development would not have been lawful if begun at the time of the application.

14. The Council raised no specific objections to the proposed rear dormer. It would involve a hip-to-gable enlargement to the roof, be L-shaped and extend over the proposed 2-storey part of the rear extension. Since that latter extension would not be lawful, it follows that there is little to be gained by assessing that dormer further. It is, however, worth recording that the Council found a proposed increase in cubic content of the original roof space of 29.86 cubic metres, yet the appellant’s plans are annotated to state a total “additional dormer volume” of 47.63 cubic metres which is over the 40 cubic metres limit for a terraced house (Class B, paragraph B.1 (d) (i) in the GPDO). The parties may wish to revisit this matter should this part of the proposal ever resurface under a new application.
15. As it is, and for the reasons given above, I conclude that the Council’s refusal to grant a certificate 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.

Andrew Dale

INSPECTOR