



Appeal Decision

Site visit made on 29 January 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal A Ref: APP/P4225/X/23/3317653

27 Turbary Walk, Milnrow, Rochdale OL16 4JN

- 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 Mr Paul Rangeley against the decision of Rochdale Metropolitan Borough Council (the LPA).
- The application, Ref 22/01584/CPL, dated 19 December 2022, was refused by notice dated 13 February 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 a Rear Dormer Extension.

Appeal B Ref: APP/P4225/X/23/3321198

27 Turbary Walk, Milnrow, Rochdale OL16 4JN

- 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 Mr Paul Rangeley against the decision of Rochdale Metropolitan Borough Council (the LPA).
- The application, Ref 23/00210/CPL dated 1 March 2023, was refused by notice dated 26 April 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 a Rear Dormer Extension.

Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and a Lawful Development Certificate is issued.
3. See Formal Decisions below.

Background information

4. The Appeal property is a two-storey, brick-built, terraced dwelling (formerly Council owned) located in Firgrove, a predominantly residential area to the west of the centre of Milnrow. It lies between Nos 26 to the south-east and 28 to the north-west and very close to the Kingsway Business Park Metro Station. Nos 25 to 27 Turbary Walk are set back slightly from the adjoining row of terraced dwellings when viewed from the north-east elevation.

5. The main door to the property is accessed from Turbary Walk. Leyfield Road lies to the north-east, beyond the 1.8m high timber fence which encloses the rear garden of the house. There is another small garden facing onto Turbary Walk. The house has an asymmetrical roof with a larger roof slope to the north-east compared to the south-west. The Appellant refers to the north-east roof slope as being to the 'rear' of the property with the south-east slope being to the 'front'.

6. The appellant constructed a dormer to this 'rear' north-east facing roof space without obtaining planning permission. This exceeded the permitted development rights/conditions in relation to its volume; its use of materials and because it projected above the ridge height of the house. A retrospective planning application was submitted but was refused consent based on its design and its prominence within the street scene.

7. An application was made under section 192(1)(b) for a LDC for a dormer which was smaller, reduced in height and which proposed using materials which matched those of the existing house. The application was refused for the following reason:

1. The proposal does not constitute permitted development by virtue of non-compliance with the requirements of Criterion (c) and (d) of Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) as the plans indicate that the proposed dormer projects beyond the roof slope which forms the principal elevation of the dwellinghouse and front a highway. In addition, the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres.

8. The dormer was further reduced in size (and therefore overall volume) to overcome the objection regarding Criterion (d) of Class B, Part 1 of Schedule 2 of the GPDO. Further evidence, with regard to what constituted the 'principal elevation' of the house, was also submitted. However, again the LPA refused to issue a LDC. This time for the following reason:

1. The proposal does not constitute permitted development by virtue of non-compliance with the requirements of Criterion (c) of Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the plans indicate that the proposed dormer projects beyond the roof slope which forms the principal elevation of the dwellinghouse and front a highway.

Appeal A

9. In this case the LDC application was refused for two reasons. The first reason was the same as that given for the refusal of the second LDC application. The plans indicated that the dormer projected beyond the north-east (rear) roof slope. The Council contends that this elevation constitutes the principal elevation of the dwelling house because it faces or fronts the highway (Leyfield Road).

10. I deal with the question of what constitutes the 'principal elevation' in detail below in considering Appeal B. However, whatever my conclusion is on this point, it remains the case that the volume of this particular proposed dormer would have clearly exceeded the cubic content of the original roof by more than 40 cubic

metres. Thus, on this point alone, the first reduced size dormer cannot constitute permitted development and the appeal must fail. A LDC cannot be issued for this proposed dormer.

Appeal B

11. The main issue is, which elevation comprises the 'principal' elevation of the dwellinghouse at No 27 Turbary Walk? If it is the south-west elevation then the proposed reduced size dormer would constitute permitted development. On the other hand, if it is the north-east elevation, then planning permission would be required for the proposed dormer because the elevation fronts Leyfield Road.

12. Having viewed the appeal property from both near and distant viewpoints; having seen the physical relationship of the terraced dwellings along Turbary Walk; having seen the house layout on this part of the estate and having seen the relationship of Leyfield Road to Turbary Walk, I do not share the Council's view that the north-east elevation is the 'principal' elevation of No 27 Turbary Walk.

13. 'Permitted development for householders-Technical Guidance September 2019' defines the 'Principal elevation' as follows:

'Principal elevation'– in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

There will only be one 'principal elevation' on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation'.

14. I acknowledge that the main highway which gives vehicular access to the dwellings along Turbary Walk is Leyfield Road. It is also the case that the proposed reduced size dormer would, like the unauthorised one, face or front the highway. However, it is evident that the Turbary Walk houses were designed to face onto the land to the south-west (on the opposite side of the Metro line), as opposed to facing the road layout for this part of the estate.

15. Furthermore, although one front door has been bricked up, all of the other main entrances, or 'front doors', to the houses face onto Turbary Walk with their 'rear' gardens facing the highway. These doors have door numbers and letterboxes and Turbary Walk, as opposed to Leyfield Road, is the formal post-coded address.

16. Access to the front of dwellings by direct footways, rather than from a main highway, is not unusual in the design of housing estates of this type and era. When approaching the terrace, of which No 27 forms a part, the overall perception is that the main frontages and designed elevations of the houses are those facing the south-west. From the north-east the perception is that the elevations are rear elevations and this is emphasised by the enclosed garden and yard areas.

17. In addition the windows facing onto Turbary walk are the main windows to the front lounge areas of the dwellings. The windows to the north-east elevation are smaller and serve the kitchen on the ground floor. This opens onto the rear garden,

and yard, again a typical design feature for houses of this type and age. Despite the recessed doorway it is still perceived as the '*back door*' to the house

18. The main doors to the properties along this section of Turbary walk are on what is perceived as the 'front' elevations. Furthermore, as referred to above, the numbering system, as well as the only letter boxes, are at these 'front door' locations. I agree with the contention put forward on behalf of the Appellant that, taking into account the definition contained in the PPDHT, the 'front' elevation (south-west) facing Turbary Walk is the one that sets the postcode to the house.

19. On my site visit I approached the appeal site from Turbary Walk and noted that this elevation appeared to be the main elevation with its front door and large picture windows facing Turbary Walk. This was the case for the whole of this section of terraced dwellings with the exception of just one, where the front door had been bricked up. As a matter of fact, and degree, I conclude that the Turbary Walk elevation is the main or 'principal' elevation of No 27.

20. It follows that the other elevation, facing onto Leyfield Road cannot be the 'principal' elevation, and that if, as appears to be the case from the submitted drawings, the rear dormer meets all of the other conditions set out in Class B of the GPDO it would have been lawful on the date of the latest LDC application.

21. The Council has not disputed that the submitted drawings for this application (all issued as Revision E and dated 14 December 2022) accord with all of the other relevant requirements and restrictions in the GPDO. Having been provided with copies of the drawings for this LDC application I have no reason to disagree with that conclusion. If the proposed dormer is not built in accordance with the submitted drawings, the Council would be entitled to issue an enforcement notice against what would be a further unauthorised development.

22. For the above reasons I conclude that the south-west elevation forms the 'principal elevation' of No 27 Turbary Walk and the appeal, therefore, succeeds. A Lawful Development Certificate is attached to this decision.

Other Matters

23. In reaching my conclusion I have taken into account all of the other matters raised by the Council. These include the Officer Report, the full planning history; the particular layout of the property including the rear accessed staircase; the initial appeal submissions; the final comments and the other dormer windows on the estate which I was shown during my site visit. However, none of these carries sufficient weight to alter my conclusion as to which elevation at No 27 is the 'principal elevation' for the purposes of the GPDO. Nor is any other factor of such significance so as to change my decision that a LDC should be issued.

Formal Decision

24. The appeal succeeds and a Lawful Development Certificate is attached below.

Anthony J Wharton

Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 1 March 2023, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development as proposed would constitute permitted development and no enforcement action could be taken against the development.

Anthony J Wharton

Inspector

Date: Monday, 12 February 2024

Appeal Reference: APP/P4225/X/23/3321198

First Schedule

A Rear Dormer Extension

Second Schedule

27 Turbary Walk, Milnrow, Rochdale OL16 4JN

Notes:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the Plans submitted with the LDC application on 1 March 2023 (Location, Site Plan, Existing Ground, Existing First Floor, Proposed Plans; Side Elevation Cut A-A and Proposed Rear Elevation). All noted as Revision E and all dated 14/12/22.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.