

---

# Appeal Decision

Site visit made on 15 November 2016

**by Nigel Burrows BA MRTPI**

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

**Decision date: 9 December 2016**

---

**Appeal Ref: APP/B1930/X/16/3149415**

**3a Beechwood Avenue, St Albans, Hertfordshire, AL1 4XP**

- 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 D Leggett against the decision of St Albans City & District Council.
  - The application Ref: 5/16/0500, dated 16 February 2016, was refused by notice dated 18 April 2016.
  - 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 described as 'Loft conversion'.
- 

## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operations which are considered to be lawful.

## Main Issue

2. The main issue in this case is whether the refusal of the application for an LDC for the development described in the fifth bullet point of the heading above was well-founded.

## Reasons

3. The proposal involves the carrying out of development for the purposes of the Town and Country Planning Act 1990. However, it is also necessary to consider whether permission would be granted for the proposal under the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which grants permission for various classes of 'permitted' development (the GPDO).
4. The Council's stance is the proposal does not amount to permitted development under the provisions of Class A, Part 1, Schedule 2 of the GPDO (which deals with the enlargement, improvement or other alteration of a dwellinghouse).<sup>1</sup> The Council has based its approach on the argument that the loft conversion 'would be attached' to an existing two storey rear extension which does not form part of the original dwellinghouse. The Council claims the proposal is subject to the limitations which apply to Class A and derives support for this stance from the government's publication 'Permitted development rights for householders: Technical Guidance' (April 2014).
5. However, the Council has not clarified which part of the Technical Guidance it seeks to rely on in this case.<sup>2</sup> The appellant has also referred to the Guidance, including the final

---

<sup>1</sup> The Council argues the development fails to meet the limitations in paragraphs A.1 (f)(i) and (g)(ii) and A.1 (i) and (j)(iii), which are mainly concerned with the height of enlargements and their width in relation to the dwelling

<sup>2</sup> Other than to refer to page 21 – which does not appear to support the Council's case

---

paragraphs of page 5 and the first paragraphs of page 6 of the document, which state:

*"When considering whether a development proposal is permitted development, all of the relevant Parts of the rules and all the Classes within those Parts need to be taken into account. So whilst Part 1 Class A prevents the installation, alteration or replacement of a chimney, flue or soil and vent pipe from being permitted development, Class G includes such development as permitted development subject to the rules set out under that Class.*

*Similarly, changes to the roof of a house are not permitted development under Class A, but may be permitted development under Class B or C. For example, where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development. If the works also include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B.*

*In order to be permitted development, a proposal must meet all the limitations and conditions under the Classes relevant to the proposal."*

6. The Technical Guidance referred to by the parties has now been superseded by the April 2016 version. In any event, similar paragraphs are carried forward in the latest Technical Guidance (pages 8 and 9). The appellant considers that Class A of the GPDO is of limited relevance to the proposal subject of the application for an LDC. I agree.
7. The loft conversion works include a hip-to-gable roof enlargement, a rear dormer window and two roof lights to be inserted within the front roof slope of the property. As such, *'the Classes relevant to the proposal'* appear to be Class B (alterations and additions to the roof of a dwellinghouse) and, in the case of the two velux windows, Class C (any other alterations to the roof of a dwellinghouse). Significantly, the Council does not appear to suggest that the works fail to comply with any of the limitations or conditions relating to Class B or Class C. I see no reason to conclude otherwise.
8. The two story rear extension was apparently granted planning permission. Nonetheless, even if it had fallen to be considered under the permitted development regime, as the Technical Guidance points out: *'... where a proposed two storey extension at the rear of a house has a roof that joins onto the main roof of the original house, the works will need to meet the requirements of both Class A (which covers the enlargement of the house) and Class C (which covers any alterations to the roof) in order to be permitted development.'*<sup>3</sup>
9. However, it does not automatically follow that this principle should be applied in reverse when assessing proposals under the GPDO; this could potentially deprive householders of their Class B permitted development rights. The Council has not provided any legal authority to support the proposition that the presence of a two storey extension to the rear of the original dwelling means the loft conversion must be considered under Class A.
10. For the reasons given above, I have concluded that the Council's refusal to grant a certificate of lawful development was not well-founded. I intend to allow the appeal.
11. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decision.

*Nigel Burrows*

INSPECTOR

---

<sup>3</sup> April 2016 Technical Guidance - first paragraph on page 9



---

## 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 2015: ARTICLE 39

---

**IT IS HEREBY CERTIFIED** that on 16 February 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development proposed is permitted under the provisions of Classes B and C, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Signed

*Nigel Burrows*

Inspector

Date: **9 December 2016**

Reference: APP/B1930/X/16/3149415

### ***First Schedule***

Loft conversion

### ***Second Schedule***

3a Beechwood Avenue, St Albans, Hertfordshire, AL1 4XP

## NOTES

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

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: **9 December 2016**

by Nigel Burrows BA MRTPI

**Land at:** 3a Beechwood Avenue, St Albans, Hertfordshire, AL1 4XP

**Reference:** APP/B1930/X/16/3149415

**Scale:** (Not to scale)

---

