
Appeal Decision

Site visit made on 23 January 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 2 February 2017

Appeal Ref: APP/P5870/X/16/3158910
66 Avenue Road, Belmont SM2 6JB

- 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 Dr John Church against the decision of the Council of the London Borough of Sutton.
 - The application Ref B2016/74894/CPU, dated 11 July 2016, was refused by notice dated 6 September 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 a side dormer to form loft rooms.
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Decision

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

Main Issues

2. I consider that the main issues are whether the proposed addition should be considered against Class A or Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 and whether it represents development granted planning permission by either of these classes.

Appeal site and proposed development

3. The appeal property is a detached house on a corner plot located at the junction of Avenue Road and Dorset Road. The addition that is the subject of this appeal would be to a 'cat-slide' roof at the side of the property. It would be set into the slope and have 3 walls rising to meet its own pitched roof that would have a hipped end facing Dorset Road. This roof would run back into the roof slope above the 2 storey section of the house, with a ridge lower than the highest point of that roof. The 'as existing' plans of the house show that there is presently an en-suite bathroom within the cat slide roof space

Reasons

4. The Council has not provided any assessment of whether the proposal would be permitted under Class B, considering that the application falls under Class A of Part 1, Schedule 2 of the GPDO. The appellant submits however that the relevant section is Class B which relates to alterations to roofs.
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5. The GPDO permits additions or alterations to the roof of a dwellinghouse provided that they meet the criteria set out in Class B.1 and the conditions imposed in B.2 of the GPDO. Of the applicable sections of Class B, [i.e. B1 (b), (c) and (d)(ii)] the proposal would not conflict with the requirement that it should not be higher than the highest part of the existing roof, it would not extend beyond the plane of an existing roof slope forming the principle elevation fronting a highway and there has been no suggestion that resulting roof space would exceed that of the original by more than the limit of 50 cubic metres.
6. Development is permitted by Class B subject to conditions. Firstly, the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The addition would be clad and roofed in tiles to match the existing house and would therefore meet this requirement.
7. Secondly, the enlargement must be constructed so that, other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension, the eaves of the original roof are maintained or reinstated and the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. The proposal would also meet these requirements, with the eaves of the addition being at the level of those of the main roof and the front elevation being set back 0.2m from the eaves of the cat-slide roof.
8. The alteration would not extend beyond the external face of the wall of the original house and condition B.2 (b) (ii) is not therefore applicable. The windows in the side elevation would be obscure-glazed, and non-opening, thereby complying with condition B.2(c). None of this has been disputed by the Council.
9. However, the Council says that the addition should properly be judged against the provisions of Class A, which relates to the enlargement, improvement or other alteration of a dwellinghouse. The Council rejects the suggestion that the extension would be a roof addition because it considers that it would not be within the roof but on top of it and that it would add space at both ground and first floor level. If this assessment is correct, the proposed addition would not be permitted development as it would fail the requirements of Class A in that that it would project beyond a wall that forms a side elevation of the original house and fronts a highway. It would also be more than 4m high and would have more than one storey.
10. I can sympathise with this view as the addition would have the appearance of a first floor side extension rather than a dormer, which is the more usual form of a Class B extension. However, there is nothing in the GPDO that limits an addition to that type of extension or even refers to or defines a 'dormer' as such.
11. Neither is there anything in Class B that restricts the addition of more floor space at first or ground floor level. In this case, the additional ground floor space would be at ceiling height and at first floor, it would remain 0.2m from the eaves and would not project beyond the side wall of the existing, as required by the GPDO. The addition would be completely within the cat slide roof and the section of the main roof from which this extends.

12. I find, therefore, that the proposal would be an enlargement of a dwellinghouse that would consist of an addition and alteration to its roof, as defined in Class B of the GPDO and that it meets the criteria and conditions for permitted development as set out therein.
13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a side dormer to form loft rooms was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

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 11 July 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:

Planning permission for the proposed development is granted through Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Katie Peerless

Inspector

Date **2 February 2017**

Reference: APP/P5870/X/16/3858190

First Schedule

A side dormer to form loft rooms

Second Schedule

Land at 66 Avenue Road, Belmont SM2 6JB

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: **2 February 2017**

by Katie Peerless Dip Arch RIBA

Land at: 66 Avenue Road, Belmont SM2 6JB

Reference: APP/P5870/X/16/3858190

Scale: NTS

