
Appeal Decision

Site visit made on 20 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 21 August 2017

Appeal Ref: APP/G3110/X/16/3161765

31 Islip Road Oxford OX2 7SP

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Mr Christopher Venning against the decision of Oxford City Council.
 - The application no: 16/01968/CPU, dated 26 July 2016, was refused by notice dated 27 September 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Rear loft conversion/extension.
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Decision

1. The appeal, insofar as it relates to the rear loft extension, is dismissed. However, insofar as it relates to the two front rooflights, the appeal is allowed and attached to this decision is an LDC describing the proposed operations which are considered to be lawful.

Preliminary matters

2. An accompanied site visit had been arranged but the Council was not in attendance. The appellant provided access for me and I proceeded on an unaccompanied basis. I am satisfied, from what I saw and the evidence that has been supplied by the parties, that I have sufficient information to reach a decision.
3. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 26 July 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application¹ which, hereafter, I shall refer to as "the GPDO". For ease of reading, however, I shall write in the present tense.
4. In April 2017 Government published "Permitted development for householders, Technical Guidance (April 2017)" [hereafter "the Technical Guidance"]. This updated an earlier version of the Technical Guidance (published 13 April 2016) which is referred to in the appeal submissions. There is no material difference

¹ The GPDO was further amended in April 2017.

between the two versions insofar as the issues relevant to this appeal are concerned.

5. Whilst not a definitive statement of the law the Technical Guidance should, as a general rule, be followed unless there are clear reasons why it does not apply in the circumstances of any particular case.
6. Although the description given of the development explicitly refers to works to the "rear" of the property, the loft conversion also includes the insertion of two rooflights to the front roof slope. I shall deal with the appeal accordingly and consider each of these elements in turn.
7. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.

Main issue

8. The main issue in this appeal is whether the decision to refuse the LDC was well founded.

Reasons

9. It is accepted by the parties, in principle, that the property can take advantage of permitted development rights under Part 1 of Schedule 2² to the GPDO subject to compliance with its various limitations and conditions.
10. In order to be permitted development, a proposal must meet all the limitations and conditions under each and every Class of the GPDO which is relevant to it.³ The Council considers Classes A, B and C⁴ are relevant whereas the appellant's case is dependant mainly upon Class B.

The rear loft extension

11. There does not appear to be any dispute that Class B applies to the rear loft extension. The Council's report addresses Class B insofar as the part of the extension which sits within the main roof of the dwelling is concerned and finds that part to be in accordance. The appellant has applied Class B to the enlargement as a whole and by reference to the Technical Guidance. I have no reason to disagree with the appellant's conclusion that the extension as a whole complies with the terms of Class B.
12. However, it does not automatically follow that the loft extension is permitted development. The enlargement could only enjoy permitted development rights if it is "an addition or alteration" to the "roof" of the dwellinghouse and nothing more; and that is a matter of fact and degree.
13. The appeal property is one of a pair of semi detached properties. It has a two storey outrigger to the rear mirroring that at the neighbouring property (number 29), both sharing a party wall. The combined outriggers have a shared

² Part 1 of Schedule 2 to the GPDO concerns "Development within the curtilage of a dwellinghouse". It provides for the carrying out of such development as permitted development subject to conditions and limitations.

³ This is stated in the Technical Guidance at page 8.

⁴ Class A concerns "The enlargement, improvement or other alteration of a dwellinghouse", Class B concerns "The enlargement of a dwellinghouse consisting of an addition or alteration to its roof" and Class C concerns "Any other alteration to the roof of the dwellinghouse".

- dual pitch roof, both slopes rising to a ridge along the line of the common boundary. The ridge height of the outrigger is significantly lower than the ridge height of the main roof.
14. The enlargement, which is "L" shaped, takes the form of a dormer extending across a sizable part of the width of the existing rear roof slope and extending outwards across the east facing roof slope of the outrigger. Whilst appearing to retain the outrigger eaves together with a small section of roof, and being set back behind its chimney, much of the existing outrigger roof would be lost.
 15. The extension would, in part, utilise the existing party wall, which (insofar as its skin to the appeal property is concerned) would break through the outrigger ridge and be extended upwards, finished in slate cladding, to form its west elevation. The party wall, however, is part of the structure of the main dwellinghouse rather than simply being a part of the roof.
 16. The extension would add a third storey above the outrigger and would be enclosed, mainly, by three new walls and flat roof at a higher level than the original outrigger roof. To my mind, in all these circumstances, the works go beyond what could (in the normal meaning of the term) be described only as an addition or alteration to a roof. The works would, as a matter of fact and degree, also amount to an enlargement of the dwellinghouse. They would, thus, fall to be considered under Class A as well as Class B.
 17. Under Class A the Council considers that the development would fail under limitations A.1(d), A.1(i) and A.1(k). I shall consider each in turn. In measuring "height" the GPDO states that the measurement should be taken from ground level.⁵
 18. Under limitation A.1(d) development is not permitted if the height of the eaves of the enlargement exceeds the height of the eaves of the existing dwelling. The eaves of this enlargement are the point at which the upper surface of its flat roof meets its walls.⁶ Thus, its eaves are higher than the eaves of the existing dwelling and it fails to meet limitation A.1(d).
 19. Limitation A.1(i) concerns the eaves height of developments which are within 2.0 metres of the boundary. The height of the eaves is limited to 3.0 metres in these cases. The subject extension, being to the common boundary with number 29 and thus "within 2.0 metres", has an eaves height considerably in excess of 3.0 metres. It, thus, fails under this limitation also.
 20. Limitation A.1(k) is that development is not permitted by Class A if (amongst other things) the works include any alteration to any part of the roof of a dwellinghouse. The appeal extension clearly would include alterations to parts of the roof. The Technical Guidance explains how this provision is to be interpreted.⁷ The aspect of the works involving alterations to the roof would (by this limitation) be excluded from Class A and would fall to be considered under Class B and/or Class C. However, the extension in the main would still fall to be

⁵ At paragraph 2, "Interpretation", the GPDO states that, unless the context requires otherwise, reference to the height of a building is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground on which it is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

⁶ The Technical Guidance, at page 12, explains how "eaves" is to be interpreted in the case of a flat roofed extension.

⁷ The Technical Guidance, at page 30, gives guidance on how limitation A.1(k) is to be interpreted.

considered under Class A. I do not find the extension to fail under this particular limitation.

21. The loft extension, even if meeting the criteria for Class B and parts of Class A, does not meet all of the Class A limitations, notably A.1(d) and A.1(i). It cannot be permitted development. An LDC will be refused in respect of the loft extension.

The front rooflights

22. I consider the front rooflights to be a severable element. In other words they can be considered separately because they could be installed without, necessarily, the rear loft extension going ahead. The rooflights, not being an enlargement as such, fall as a roof alteration to be considered under Class C.
23. Under Class C there is a limitation that the development should not protrude more than 0.15 metres beyond the plane of the roof slope when measured in the perpendicular. Whilst this dimension is not indicated on the drawing specifically, most rooflights would not protrude by more than that amount and there is no indication in the east and west elevations that the rooflights protrude at all. Therefore, I interpret the proposal to be for rooflights which are flush with the existing roof or which protrude no more than a de minimis amount.
24. The Council has set out in its delegated report that the rooflights accord with all the limitations and conditions of Class C. I agree. Therefore, I find the rooflights to be permitted development and that, in respect of this element, an LDC will be granted.

Other matter

25. On the application form reference is made to other appeal decisions. However, copies of these documents have not been supplied so I have been unable to take them into account. In any event, I must make my own decision based on the evidence and facts that are before me in this particular case.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a rear loft extension was well founded and that the appeal should fail. On that element I will exercise accordingly the powers transferred to me under s195(3) of the Act.
27. However, in respect of the two rooflights to the front of the property I conclude that the Council's refusal to grant an LDC was not well founded and that the appeal should succeed. On that element I shall exercise the powers transferred to me under s195(2) of the Act.

Susan Wraith

INSPECTOR

Lawful Development Certificate

APPEAL REFERENCE APP/G3110/X/16/3161765
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 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 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

The proposed rooflights would have been permitted development under Class C3 of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Susan Wraith

INSPECTOR

Date: 21 August 2017

First Schedule

Installation of two rooflights to the front elevation.

Second Schedule

31 Islip Road Oxford OX2 7SP

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
 2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
 3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from those 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.
 4. 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.
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Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 August 2017

by Susan Wraith Dip URP MRTPI

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Appeal ref: APP/G3110/X/16/3161765

Scale: Not to scale

