
Appeal Decision

Site visit made on 12 November 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2019

Appeal Ref: APP/X0415/X/18/3194957

34 Bellingdon Road, Chesham, Buckinghamshire, HP5 2HA

- 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 & Mrs Michael & Celia Paterson against the decision of Chiltern District Council.
 - The application no: CH/2017/2194/SA, dated 27 November 2017, was refused by notice dated 19 January 2018.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: Loft conversion with new loft dormers, rooflights in main roof, and new side facing window to first floor.
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Decision

1. The appeal, insofar as it relates to the loft dormers, is dismissed. However, insofar as it relates to the rooflights in the main roof, the appeal is allowed and attached to this decision is an LDC describing the proposed operation which is considered to be lawful.

Preliminary matters

2. The new side facing window to the first floor, comprised in the application, has already been granted an LDC by the Council. Under s192(4) of the Act its lawfulness at the date of the application is conclusively presumed. Therefore, this is not a matter that I need to consider further. For the purpose of this determination I shall focus upon the other elements of the proposal.
3. The relevant date for this determination of lawfulness is the date of the application, i.e. 27 November 2017. The matter to be decided upon is whether the works would have been lawful if implemented at that date. Whilst the relevant date is in the past I shall write in the present tense for ease of reading.
4. The planning merits of the matter applied for, including the extent to which the development can be seen, its effect upon the living conditions of neighbours and the occurrence of other similar neighbouring developments¹, do not fall to be considered. The decision will be based strictly upon the facts of the case and relevant planning law.

¹ The roof extensions at 30 and 32 Bellingdon Road were (according to the Council) the subject of planning applications rather than LDC applications.

5. In making this decision I shall have regard to "Permitted development for householders, Technical Guidance (April 2017)" [hereafter "the Technical Guidance"]. 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. The burden of proof in an LDC appeal is upon the appellant. The standard of proof is one of balance of probability.

Main issue

7. The main issue is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is "permitted development" under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter "GPDO"].

Reasons

8. The appellant considers that the development is permitted development under Class B². I have no reason to disagree with the appellant's conclusion that the works as a whole comply with the terms of Class B.
9. However, the Technical Guidance, at page 8, says that in order to be permitted development a proposal must meet all the limitations and conditions under each Class relevant to the proposal and that it is essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights. Therefore, it does not necessarily follow that, because the works comply with Class B, they are permitted development. The works can only be permitted development under Class B if they amount to "an addition or alteration" to the "roof" of the dwellinghouse and nothing more; and that is a matter of fact and degree.
10. 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 36), both sharing a party wall³. The combined outriggers have a shared 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. Also the eaves of the outrigger are lower than the eaves of the main roof.
11. 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 then outwards across the roof slope of the outrigger. Whilst appearing to retain the outrigger eaves together with a small strip of roof, much of the existing outrigger roof would be lost.
12. The enlargement, in part, utilises the existing party wall, and (insofar as its skin to the appeal property is concerned) breaks through the outrigger ridge and extends upwards to just below the ridge height of the main roof. It also builds up from the rear external wall of the outrigger. Thus the enlargement utilises

² Permitted development under Class B to Part 1 of Schedule 2 of the GPDO is "the enlargement of a dwellinghouse consisting of an addition or alteration to its roof". The provision is subject to limitations and conditions.

³ There is a further single storey outrigger although this does not form part of the proposal.

parts of the structure of the main dwellinghouse and the works are not limited simply to those affecting its roof.

13. The enlargement, essentially, adds a third storey above the outrigger and, at this part, is enclosed mainly by new walls and a flat roof at a higher level than the original outrigger roof. Also, a small section of new wall (that below the eaves of the main dwelling), extends outwards directly from the rear facing wall of the main part of the dwelling. 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 A⁴ as well as Class B.
14. Under Class A the Council considers that the development does not comply under limitation A.1(k)(iv). A.1(k)(iv) says 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 works clearly do include alterations to parts of the roof. However, the Technical Guidance explains that the various classes of Part 1 are not entirely disjunctive in this context and that, whilst alterations to the roof may not be permitted under Class A, they may be permitted development under Class B and/or C⁵. Therefore I do not find the works, necessarily, to fail under this particular limitation.
15. The enlargement would, however, still fall to be considered under the other limitations and conditions of Class A including the limitations placed on eaves height for example. There is no evidence from either party on these matters. In the absence of any evidence to the contrary, there is doubt that the works could be permitted development when assessed against Class A as a whole.
16. I have been referred to a number of LDC and appeal decisions relating to roof extensions and dormers. Plans have been supplied to assist with interpretation although I do not have the full evidence that was before the decision makers in these cases. Some decisions have been provided to support the Council's case whilst others have been submitted to support the case made by the appellant. I cannot draw any definitive conclusions from these decisions and I have made this decision based on its individual facts focusing upon the wording of the GPDO and the interpretation given in the Technical Guidance.
17. I have taken into account the guidance on "L-shaped domers" given at page 37 of the Technical Guidance. However, this does not alter my view that the works amount to more than an addition or alteration to the roof and therefore fall to be considered against Class A.
18. It has not been shown, on balance of probability, that the enlargement is permitted development when taking into account the limitations of Class A. The burden of proof that is upon the appellant has not been satisfactorily discharged.

Other matter

19. In respect of the two rooflights to the front facing main roof slope, the Council considers that they do not materially affect the external appearance of the

⁴ Permitted development under Class A to Part 1 of Schedule 2 of the GPDO is "the enlargement, improvement or other alteration of a dwellinghouse". The provision is subject to limitations and conditions.

⁵ The Technical Guidance, at page 30, gives guidance on how limitation A.1(k) is to be interpreted.

building and therefore do not constitute development as it is defined under s55 of the Act⁶. Even if they were to be considered as development they would, as a separate and severable operation, be permitted development under Class C⁷. Either way the works to install the rooflights would be lawful. I shall issue an LDC in respect of that element only.

Conclusion

20. 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.
21. However, in respect of the two rooflights to the front of the property I conclude 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

⁶ A note to this effect is included on the LDC decision notice issued by the Council (the subject of this appeal).

⁷ Permitted development under Class C is " any other alteration to the roof of a dwellinghouse", and is subject to limitations and conditions.

Lawful Development Certificate

APPEAL REFERENCE APP/X0415/X/18/3194957
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 27 November 2017 the operation 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 works not materially affecting the external appearance of the building and, thus, not amounting to development as it is defined in s55 of the Town and Country Planning Act 1990 (as amended). Alternatively the works 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: 08 January 2019

First Schedule

Installation of rooflights in the main roof

Second Schedule

34 Bellingdon Road, Chesham, HP5 2HA

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:
08 January 2019

by **Susan Wraith Dip URP MRTPI**

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Scale: Not to scale

