



Appeal Decision

Site visit made on 26 November 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Appeal Ref: APP/W1905/X/18/3216959 64 Smarts Green, Cheshunt EN7 6BA

- 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 Andrew Papageorgiou against the decision of Broxbourne Borough Council.
 - The application Ref 07/18/0703/LDP, dated 19 July 2018, was refused by notice dated 20 August 2018.
 - 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 loft conversion with rear dormer.
-

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.

Procedural matter

2. The applicant is named on the application form as "Mr Andy". However, it is clear that the applicant and appellant is Mr Andrew Papageorgiou, and I have referred to him by this name in preference to that shown on the application form.

Main Issue

3. The main issue is whether the decision to refuse the certificate of lawful development was well-founded.

Reasons

4. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants deemed planning permission for various classes of development. The Council accepts that the proposal would comply with all the criteria of Class B.2 of Part 1, Schedule 2 of the Order, except for one. The matter at issue is whether the proposal would comply with the provisions of Class B.2(b)(ii) which provides that:

The enlargement must be constructed so that—

- (i) (criterion not relevant here); and

- (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.
5. The house has previously benefitted from a rear two-storey extension with a hipped roof, joining the pitched roof of the original dwelling at right-angles, stepped down in height from the ridge of the main roof. It is proposed to construct an L-shaped dormer, which would project from the rear roofslope of the original roof and extend over much of the roof of the two-storey extension. Thus, the proposal would extend beyond the outside face of an external wall of the original dwellinghouse, and would not comply with the second part of Class B.2(b)(ii). The matter which is in dispute between the parties is whether the exception to this restriction, in the first part of the paragraph, applies here.
6. Thus, the question is whether the proposal is an enlargement which joins the original roof to the roof of a rear extension. The Council argues that it would merely sit on top of the roof of the rear extension, rather than being used to join it. However, I disagree. In the normal use of language "join" means to put things together, so that they become physically united or continuous, and the enlargement would do just that. The Order says nothing about an enlargement being "used" to join the two roofs; the use of the enlargement is irrelevant to this criterion, and it is solely a matter of physical joining.
7. The Government's document *Permitted development rights for householders – Technical Guidance* provides interpretative advice about permitted development rights and says in respect of Class B.2:
- The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other.*
8. Although the guidance is just that, and has no legal status, it nevertheless reinforces what I consider to be the straightforward meaning and application of the words used in this part of the Order.
9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed loft conversion with rear dormer was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant a certificate of lawful development.

JP Roberts

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 19 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed loft conversion with rear dormer is "permitted development" and benefits from the deemed planning permission granted under Article 3(1) and Class B of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

JP Roberts

Inspector

Date

Reference: APP/W1905/X/18/3216959

First Schedule

The erection of a loft conversion with rear dormer as shown on plan ref: SG-002/2018.

Second Schedule

Land at 64 Smarts Green, Cheshunt EN7 6BA

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:

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

Land at: 64 Smarts Green, Cheshunt EN7 6BA

Reference: APP/W1905/X/18/3216959

Not to scale

