



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/T0355/X/19/3233539
7 South Road, Maidenhead SL6 1HF

- 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 Ms Eleanor Jones against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/00342, dated 5 February 2019, was refused by notice dated 2 April 2019.
 - 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 hip to gable conversion, L-shaped dormer and front rooflights.
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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.

Reasons

2. The appeal property comprises a semi-detached property. It includes an original rear outrigger with a mono-pitched roof which is at a lower level to the main roof of the house. The proposed development would involve widening the roof by changing the side from a hipped to a gable end, adding an L-shaped dormer extension to the rear and inserting rooflights into the front roof slope. One arm of the L shaped dormer would extend across the main rear roof slope whilst the other arm would extend across part of the roof slope of the outrigger at a lower level due to the difference in levels between the main roof and the outrigger.
3. The appellant contends that the proposed hip to gable conversion and the L-shaped dormer would be granted planning permission under Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. However, the Council considers that the proposed development fails to comply with conditions B.2(b)(i)(aa) and (ii).
4. Development is permitted by Class B subject to conditions.

Condition B.2 states: -

- (b) the enlargement must be constructed so that –
 - (i) 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 –
 - (aa) the eaves of the original roof are maintained or reinstated.
 - (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 Council has considered the proposed development as joining a dormer to a dormer. This is misconceived since, in my view, it is only appropriate to consider the proposed L-shaped dormer as one discrete operation not separate out its constituent parts. The proposed L-shaped dormer would be a single structure, and so, as a matter of fact and degree, it would be an enlargement which joins the main roof to the roof of the outrigger and conditions B.2(b)(i)(aa) and B.2(b)(ii) do not apply.
- 6. The Department for Communities and Local Government publication "*Permitted development rights for householders Technical Guidance (2017)*" (TG) explains the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In relation to condition B.2 the TG states that "The enlarged part of the roof may join the original 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". Having regard to the submitted plans, the TG supports my assessment above in this particular case.
- 7. The Council also considers that the proposed hip to gable conversion and L-shaped dormer would fall to be considered under but not permitted by Class A of the GPDO which permits the enlargement of a dwellinghouse. The Council says that Class A is relevant because the "rear wall would be extended to support the L-shaped dormer".
- 8. The TG states that "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". In this case, the submitted plans are clear that there is no proposal to enlarge or alter any part of the dwellinghouse except the roof. There would be no change to the rear elevation below the eaves, and the side elevation would only be altered through the hip to gable extension which is permitted with the dormer under Class B. It follows that Class A is not relevant and it does not matter that the development would not, as the Council contends, comply with paragraphs A.1.(i) and A.1.(k)(iv).
- 9. The Council considers that the proposed front rooflights would comply with Class C of the GPDO which permits other alterations to the roof of a dwellinghouse. I agree, that the rooflights would be permitted development under Class C.

10. In the submissions from both main parties, attention has been drawn to a number of appeal decisions¹ which involve L-shaped dormers. It would appear that there is a difference in approach between Inspectors when considering whether L-shaped dormers fall within Class A of the GPDO. In the case of 20 Leighton Road² the Inspector found that appeal scheme was not permitted development by virtue of Paragraph A.1 (i) of the GPDO. In the cases of Vansittart Road³ and Stapleton Road⁴ the Inspectors concluded that Class A did not apply due to paragraph A.1.(k)(iv).
11. I have considered the previous Inspectors' findings and decisions and acknowledge the importance of consistency in these matters. However, I do not have the full details of these appeal decisions and so cannot be certain that these developments mirror the proposal before me. I have therefore determined this particular case having regard to the submitted plans together with the guidance in the TG.

Conclusion

12. For the reasons given above I conclude, on the evidence before me that the Council's refusal to grant a certificate of lawful use or development in respect of a hip to gable conversion, L-shaped dormer and front rooflights 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.

Elizabeth Jones

INSPECTOR

¹ APP/G3110/X/17/3166798, APP/Q1445/X/18/3209802 and APP/T0355?X/16/3142500.

² APP/Q1445/X/18/3209802.

³ APP/T0355?X/16/3142500.

⁴ APP/G3110/X/17/3166798.



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 5 February 2019 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 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development consisting of the hip to gable conversion and L-shaped dormer is "permitted development" falling within Class B of Part 1 of Schedule 2, and the proposed development consisting of front rooflights are permitted development falling within Class C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

Elizabeth Jones

Inspector

Date 05 December 2019

Reference: APP/T0355/X/19/3233539

First Schedule

A hip to gable conversion, L-shaped dormer and front rooflights.

Second Schedule

Land at 7 South Road, Maidenhead SL6 1HF

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 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, not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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 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: 05 December 2019

by **Elizabeth Jones BSc (Hons) MTCP MRTPI**

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