



Appeal Decision

Site visit made on 10 December 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 13th February 2020

Appeal Ref: APP/B0230/X/19/3224689 107 Vincent Road, Luton LU4 9AN

- 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 by Mrs Zeena Burns against the decision of Luton Council.
 - The application ref. 19/00007/LAWP, dated 29 December 2018, was refused by notice dated 26 February 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate of lawful use or development is sought is the formation of a single-storey rear extension attached to the side and rear of the of the existing house, together with the formation of a single-storey porch attached to the front of the house.
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Decision

1. The appeal is dismissed insofar as it relates to formation of a single-storey rear extension attached to the side and rear of the of the existing house.
2. The appeal is allowed insofar as it relates to formation of a single-storey porch attached to the front of the house, and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operations which are considered to be lawful.

Preliminary matters

3. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Reasons

4. In an appeal against refusal to grant an LDC the main issue for me to determine is whether on the balance of probabilities the Council's decision to refuse the grant of an LDC was well-founded. In that regard the principal question here is whether at the date of application for the LDC, the proposed development would have been lawful in terms of Classes A and D of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO).

5. Class A of Part 1 to Schedule 2 of the GPDO includes permission for the enlargement of a dwellinghouse. This is subject to a number of limitations, restrictions and conditions. Those relevant in this case are set out in paragraphs A.1, A.3 and A.4 of Class A. Class D permits the construction of a porch outside any external door of a dwellinghouse, subject to the limitations set out in paragraph D.1 of Class D.
6. The appeal property is a chalet bungalow on the western side of Vincent Road. The proposed enlargement would extend 4 metres beyond the main back wall of the existing house, and along the entire southern flank of the house. At the back it would take up virtually the full width of the site, leaving a margin of 0.2 of a metre along the southern boundary. There would be a porch built on the front elevation of the house.
7. There would be a flat roof over the part of the extension directly behind the existing house, at the height of the main eaves – approximately 2.45 metres above ground level. The section of extension along the southern boundary would have a pitched roof at front and back, with a flat roof along most of its length at a height of 4 metres.
8. The proposed extension would not comply with the provisions of Class A in the following respects:
 - i. The extension would project more than 3 metres beyond the rear wall of the dwelling, and would not accord with requirement A.1(f)(i) of Class A.
 - ii. The government's guidance on permitted development for householders¹ (the Technical Guidance) that was current on the date of the application advises at page 12 that the eaves height for a flat roof is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof. Although the height of the eaves at the front and back of the side extension would be 2.45 metres, the height of the flat roof eaves along the side boundary would be 4 metres. The extension would therefore not accord with the requirement A.1(i) of Class A, which precludes an enlargement within 2 metres of a dwelling's curtilage with eaves that exceed 3 metres in height.
 - iii. In a case such as this, where the enlarged part of the dwelling would extend beyond the side elevation, development is precluded by requirement A.1(j)(iii) of Class A if it has a width greater than half the width of the original dwellinghouse. This proposal would extend beyond the side elevation by some 2.35 metres and given it is virtually the full width of the plot would be considerably wider than half the width of the original dwellinghouse. An illustration of this situation is shown on page 27 of the Technical Guidance.
9. The appellant has not made an application for, or been granted prior approval for the proposal, and the permitted development right under A.1(g) to extend beyond the back wall by up to 6 metres is not applicable. In any case, the proposal would fail to comply with the restriction on width for an enlargement beyond a side elevation.
10. I appreciate that the Council have referred to the proposal being non-compliant with the requirements of Class A in respect of Paragraph A.2, which relates to

¹ DCLG document 'Permitted Development Rights for Householders – Technical Guidance' of April 2017.

development on Article 2(3) land. The Council accept that this was in error since the site is not on Article 2(3) land. However, that does not invalidate their conclusions on other aspects of Class A.

11. Regarding the proposed front porch, this would be distinct from the side and rear extension, and I consider can be considered separately. The ground area of the proposed porch measured externally would have a ground area slightly less than 3 square metres, have a height of less than 3 metres, and be more than 2 metres from the highway boundary. It would therefore comply with the relevant requirements of paragraph D.1 of Class D.
12. Overall, I consider that on the balance of probabilities the Council's decision to refuse an LDC for the side and rear extension was well-founded, but that their decision to refuse an LDC for the front porch was not well-founded.

Conclusions

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 the formation of a single-storey rear extension attached to the side and rear of the of the existing house was well-founded and that the appeal should fail in that respect. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.
14. I further conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of formation of a single-storey porch attached to the front of the house was not well-founded and that the appeal should succeed in that respect. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Brown

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 29 December 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 192(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed single-storey porch attached to the front of the house would be development permitted under the provisions of Class D of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Stephen Brown

INSPECTOR

Date: 13th February 2020

Reference: APP/B0230/X/19/3224689

First Schedule

Formation of a single-storey porch attached to the front of the house.

Second Schedule

Land at: 107 Vincent Road, Luton LU4 9AN.

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, 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 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: 13th February 2020

by Stephen Brown MA(Cantab) DipArch RIBA

Land at: 107 Vincent Road, Luton LU4 9AN

Reference: APP/B0230/X/19/3224689

Scale: DO NOT SCALE

