



Appeal Decision

Site visit made on 12 February 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/G3110/X/19/3231723

37 Harpes Road, Oxford OX2 7QJ

- 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 & Mrs Harding against the decision of Oxford City Council.
 - The application Ref 19/00987/CPU, dated 15 April 2019, was refused by notice dated 7 June 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 formation of habitable room in roof space with rear dormers.
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Decision

1. 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 Council raise no issues in respect of the lawfulness of the proposed two rooflights to the front facing main roof slope. I have therefore not considered this element of the appeal scheme further.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful development was well-founded.

Reasons

4. The appeal site comprises a mid-terrace two storey dwelling. The proposed development comprises an L-shaped dormer extension to the rear, creating accommodation in the attic space.
5. Part of the box dormer would sit within the confines of the rear roof slope of the main building. The Council's concern relates to the element of the proposed development that would extend over the rear outrigger roof, forming the L-shape. They consider that planning permission is required as this element fails to meet the requirements of permitted development in respect of Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which permits the enlargement,

- improvement or other alteration of a dwelling house, subject to a number of conditions and restrictions.
6. However, although the Council's approach disaggregates the rear extension into two parts, the whole L-shaped structure should properly be considered as a single operational development. As the appeal development is an enlargement to the dwellinghouse, and falls to be considered as a whole rather than in its component parts, the most appropriate Class against which to assess it for permitted development purposes is Class B of Schedule 2, Part 1 of the GPDO.
 7. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to restrictions. As set out within the planning officer's report, the Council are satisfied that the rear extension falls within the conditions set out within paragraph B.1.
 8. When viewed as one structure, the development can be understood as joining the original roof to the roof of the rear outrigger. Under paragraph B.2(b), it is necessary to consider whether the development falls within the exception highlighted below:
 - B.2(b)(i)(aa): *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*, the eaves of the original roof are maintained or reinstated.
 - B.2(b)(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.
 9. The 'Permitted development rights for householders – Technical Guidance' (TG) document gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. With regard to condition B.2(b), it says: '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'. This strongly suggests to me that the exception applies in this case as it describes the situation as proposed here, and so neither condition B.2(b)(i)(aa) or B.2(b)(ii) is relevant to the proposal.
 10. Although there is a point at which the development would adjoin the rear wall of the main house, the degree of alteration to the wall would so minimal that, to my mind, it would be insufficient to engage Class A. Furthermore, an issue has been raised about the original outrigger roof being subsumed and replaced by an extension, as opposed to a development that may be termed an extension to the roof. However, only around half of the outrigger roof would be removed, and for the reasons above, I am satisfied that the development falls within the scope of Class B. I have had regard to the appeal decision (ref: APP/G3110/X/16/3149369) cited by the Council, but this has not led me to a different conclusion.

11. Drawing these factors together, I find, on balance of probability, that the enlargement is permitted development when taking into account the limitations set out in the GPDO. The burden of proof that is upon the appellant has been satisfactorily discharged.

Conclusion

12. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the formation of habitable room in roof space with rear dormers 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.

Elaine Gray

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 15 April 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 works would have been permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Elaine Gray

INSPECTOR

Date: 27 March 2020

Reference: APP/G3110/X/19/3231723

First Schedule

Formation of habitable room in roofspace with rear dormers.

Second Schedule

37 Harpes Road, Oxford OX2 7QJ

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 my decision dated: 27 March 2020

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Land at: 37 Harpes Road, Oxford OX2 7QJ

Reference: APP/G3110/X/19/3231723

Scale: Not to scale

