



Appeal Decision

Site visit made on 16 March 2020

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2020

Appeal Ref: APP/J0405/X/19/3237948

2 Constance Street, Buckingham MK18 7RG

- 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 Joe Obeng against the decision of Aylesbury Vale District Council.
 - The application Ref 19/02785/ACL, dated 26 July 2019, was refused by notice dated 19 September 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 insertion of roof lights into the existing roof and installation of new second floor, erection of partitions, installation of window in gable end.
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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.

Background

2. The appeal property is a modern end terrace house that stands on the north-west corner of the junction of Mayflower Street and Constance Street. The terrace is configured so that the front elevation of the property faces onto Constance Street.
3. Condition 10 of the planning permission for the development that includes No.2¹ states:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no enlargement of any dwelling nor the erection of any garage shall be carried out within the curtilage of any dwelling the subject of this permission, no windows, dormer windows, no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwelling which fronts onto a highway, no buildings, structures or means of enclosure shall be erected on the site, no hard surface shall be provided on the land the subject of this permission, other than those expressly authorised by this permission."

¹ Planning permission Ref:11/01529/ADP.

Reasons

4. The proposal has 3 components, internal works, including partitions, to provide additional living accommodation at second floor level, the insertion of a window in the appeal property's west elevation, and the installation of 4 roof lights in its south facing [front] roof slope. The notice of refusal focuses on the latter, but both it and the Council's appeal statement are silent insofar as the other 2 elements of the scheme are concerned. As it is not clear what the Council's position regarding these points is, I shall deal with these matters before moving on to consider the main point in contention.
5. As works which affect only the interior of the building are expressly excluded from the definition of development by virtue of the provisions of section 55(2) (a) of the 1990 Act, the proposed internal works would be lawful on this basis. Self-evidently, the proposed window on the property's west elevation would be an external alteration, but there are already 2 windows on this elevation, albeit at lower levels than the proposed one. In the light of this, as a matter of fact and degree, I do not consider that adding another feature similar to those that already exist here would materially affect the external appearance of the building. Consequently, by virtue of section 55(2) (b), this would not constitute development either. I therefore find that these other seemingly uncontroversial components of the scheme would be lawful.
6. Turning to the 4 proposed roof lights, by punctuating what at present is a significant homogenous feature of the building, they would add a wholly new, different, and very noticeable visual component to the property's south facing elevation. Moreover, due to No.2 being a corner property, coupled with the juxtaposition of the properties in Constance Street relative to each other, the presence of the rooflights would be readily apparent from a number of viewpoints in the locality. Notwithstanding my finding regarding the side window, my conclusion is that as a matter of fact and degree, the insertion of the 4 rooflights as proposed within one of the main features of No.2's built form would be a building operation that would materially affect the external appearance of the appeal property as a whole, and so would constitute an act of development.
7. Although the Council's notice of refusal refers expressly to the provisions of Schedule 2 Part 1 Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), it goes on to say that permitted development rights for the insertion of a window forward of any wall of a dwelling house which fronts onto a highway were removed under planning permission ref.11/01529/ADP. I take this to mean condition 10 of that permission, set out in paragraph 2 above.
8. To my mind, the Council's approach gives rise to 2 problems. Firstly, the provisions of Schedule 2 Part 1 Class C of the GPDO make no reference to windows forward of any wall of a dwelling house which fronts a highway – indeed, it is not easy to see how alterations to a roof could result in such an eventuality. Secondly, the manner in which condition 10 is framed is somewhat imprecise and ambiguous – I note that the Council acknowledge that its wording is 'clumsy'².

² Council's statement paragraph 6.6

9. While condition 10 purports to remove a whole raft of permitted development rights, the key phrase in the condition is "*no windows, dormer windows, no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwelling which fronts onto a highway*". In other words, all the items referred to here are qualified by the wording, "*forward of any wall of that dwelling which fronts onto a highway*". In this case, the windows in question would be behind the vertical plane of the front wall of the house and would not protrude in front of it, as the sectional drawing appended to the appellant's statement of case indicates.
10. The upshot of this is that I do not consider the proposed roof lights would be 'caught' by condition 10 and therefore fall to be considered in the light of Schedule 2 Part 1 Class C of the GPDO. Having read that the windows would not project more than 150mm above the plane of the slope of the appeal property's roof³, my view is that the installation of the rooflights would constitute permitted development under this section of the GPDO.
11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of insertion of roof lights into the existing roof and installation of new second floor, erection of partitions, installation of window in gable end at 2 Constance Street, Buckingham MK18 7RG was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. It is not appropriate to attach conditions to a LDC.

D H Brier

Inspector

³ Email from the appellant's agent dated 3 February 2020.



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 26 July 2019 the described in the First Schedule hereto in respect of the land specified in the Second Schedule 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 roof lights are permitted development by virtue of the provisions of Schedule 2 Part 1 Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015. The installation of new second floor, erection of partitions, and installation of window in the gable end do not constitute development as defined by section 55 of the 1990 Act.

Signed

D H Brier

D H Brier BA MA MRTPI
Inspector

Date 01 April 2020

Reference: APP/J0405/X/19/3237948

First Schedule

Insertion of roof lights into the existing roof and installation of new second floor, erection of partitions, installation of window in gable end.

Second Schedule

Land at 2 Constance Street, Buckingham MK18 7RG.

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.