



Appeal Decision

by **S Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Appeal Ref: APP/V4630/X/19/3231229

28 Park Road, Walsall, West Midlands WS5 3JU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs K Johal against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 19/0338, dated 13 March 2019, was refused by notice dated 22 May 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 2 storey rear extension for domestic use.
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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 operations which are considered to be lawful.

Preliminary matters

2. The description of development is noted on the application form as that referred to in the banner above. The Council amended the description to more accurately describe the proposal and notified the applicant of its intention. I shall refer to the proposed development by the amended description; two storey and part single storey rear extension.
3. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information to satisfy that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case the application should be refused.
4. In an appeal under s195 of the Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities. No site visit was made in this case as it was not necessary for me to inspect the property internally or externally in order to determine the appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse a LDC was well-founded. The decision turns on whether the proposal is permitted development (PD) under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

6. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application for a two storey and part single storey rear extension against the provisions set out in Schedule 2, Part 1, Class A and B of the GPDO.
7. The Council refused the LDC on the grounds that the proposed two storey extension to the rear of the dwelling was considered not to be permitted development under Class A.A.1 (d) and Class B.B.2 (b) Schedule 2 Part 1 of the GPDO.
8. Drawing AG237/1 dated 02/05/2019 and forming part of the application for the LDC, shows the proposed rear extension with accommodation on the ground and first floors. There is no proposal before me which indicates works to the roof space that would provide additional living accommodation for the property.
9. The proposal was incorrectly judged against Class B of the GPDO for the addition/alteration to the roof where no accommodation was proposed. Because the judgement was made under Class B, the proposal was also found to not comply with Class A.A.1 (d) whereby it was assessed that the height of the eaves of the proposed extension would exceed the height of the eaves of the existing dwellinghouse. Accordingly, the LDC should have had regard to the limitations and conditions within Schedule 2, Part 1, Class A of the GPDO only. There is no requirement to consider the proposal under Schedule 2, Part 1, Class B of the GPDO for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
10. Furthermore, following a reassessment of the proposal, the Council, in its appeal statement, accepts that its reliance on Class A.A.1 (d) was incorrect and therefore it does not defend the reason for refusal. The Council also accepted that the proposal would not breach any of the other limitations and conditions in Schedule 2, Part 1, Class A of the GPDO. Following my own assessment of the evidence before me, I find no reason to conclude otherwise. The proposed development meets the requirements of Schedule 2, Part 1, Class A of the GPDO.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the erection of a two storey and part single storey rear extension was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me under s195(2) of the Act.

S Hanson 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 13 March 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 available evidence shows that, on the balance of probability, the proposed operations described in the First Schedule and shown on the drawing titled 2 Storey Rear Extension Lawful Development Certificate 1:50, 1:100, 1:500, 1:1250 drawing no. AG237/1 dated 02/05/2019 would be granted planning permission by Article 3, Schedule 2, Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S Hanson

INSPECTOR

Date: 7 April 2020
Reference: APP/V4630/X/19/3231229

First Schedule

Two storey and part single storey rear extension

Second Schedule

28 Park Road, Walsall, West Midlands WS5 3JU

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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which are materially different from those described, or which relate 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: 7 April 2020

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Land at: 28 Park Road, Walsall, West Midlands WS5 3JU

Reference: APP/V4630/X/19/3231229

Scale: Not to scale

