
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2020

Appeal Ref: APP/F5540/X/19/3235308

3 The Green, Hounslow, Middlesex TW5 0RL

- 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 Bharat Singh against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00508/3/LAW1, dated 1 May 2019, was refused by notice dated 26 July 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 the construction of a rear dormer, a gable end roof and a porch.
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Decision

1. The appeal is dismissed in respect of the construction of a rear dormer and a gable end roof.
2. The appeal is allowed in respect of the porch and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Preliminary Matter

3. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit which was scheduled to take place on 11 May 2020. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
4. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans to understand the nature of the site given the points in dispute.

Procedural Matters

5. There are two elements to the appellant's proposed development namely, a loft extension and the erection of a porch. However, the Council made no mention of the porch either in their decision notice or their officer report. As it is referred to in the application form and is shown on the plans it seems to me that I could deal with it on the basis that the Council has failed to determine this aspect of the development.

6. The Council's reason for refusal relies on the fact that the appeal site is situated within Heston Village Conservation Area (CA) but incorrectly refers to and relies on Class A.1(f) of Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). This part of the GPDO deals with rear single storey extensions whereas it is Classes B and C of the GPDO that deal with the enlargement of a dwelling consisting of an addition or alteration to its roof and the insertion of rooflights. Nevertheless, the Council's decision was to refuse the application and I could therefore deal with the appeal on that basis as the main issue in such an appeal is whether the Council's actual decision was well founded or not well founded.
7. Finally, the appellant's site location plan outlines No 2 The Green whereas it is clear from the layout and elevation drawings that No 3 The Green is the adjacent property to the north. As the site location plan contains an error it is not clear whether the appeal site lies within a CA. Prior to determining the appeal, a letter was sent to the Council about this matter and they have subsequently confirmed that No 3 does lie within a CA.

Reasons

8. With regard to the loft extension, the principle point at issue is the location of the appeal site within a CA, notwithstanding that the design of the proposal may or may not accord with all the other criteria of Classes B and C of the GPDO. Paragraph B.1. of the GPDO states that '*Development is not permitted by Class B if*' after which follows various limitations and paragraph (f) states '*the dwelling house is on article 2(3) land.*' Article 2(3) land is defined in the GPDO as land within conservation areas as well as National Parks and areas of outstanding natural beauty. Following the Council's confirmation that the location of No 3 The Green does lie within a CA, it is therefore considered that the loft extension proposal would not be permitted development and as such it would not be lawful.
9. Turning now to the porch, it is apparent from the planning history of the site that the property was erected as a single dwelling. The plans show that the ground floor area of the structure would not exceed 3sqm and that no part of the structure would be more than 3m above ground level. Furthermore, no part of the structure would be within 2m of any boundary of the curtilage of the dwelling with a highway. I therefore find that the proposed porch would be lawful as it would accord with all the limitations of Schedule 2, Part 1, Class D off the GPDO.

Conclusions

The loft extension

10. 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 construction of a rear dormer and a gable end roof was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

The porch

11. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development

in respect of the porch 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.

D Fleming

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 1 May 2019 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 erection of the porch would constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 as amended, for which planning permission is required. The dwelling house was substantially complete before the works took place. As such, planning permission is granted by Article 3(i) of the Town and Country Planning (General Permitted Development)(England) Order 2015, for the porch shown on drawing numbers: 1 and 3, dated 17 September 2018, drawing number 2, dated 18 October 2018 and the revised site location plan received 2 June 2020, since the development falls within Class D of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming

Inspector

Date: 05 June 2020

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First Schedule

Erection of a porch

Second Schedule

Land at 3 The Green, Hounslow, Middlesex TW5 0RL

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 the Lawful Development Certificate dated: 05 June 2020

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Scale: not to scale

