



# Appeal Decisions

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

---

## **Appeal A Ref: APP/B4215/X/19/3243654**

### **31 Albert Hill Street, Manchester M20 6RF**

- 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 Avtar Sokhi against the decision of Manchester City Council.
  - The application Ref 125244/LP/2019, dated 23 October 2019, was refused by notice dated 18 December 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 erection of L shaped dormer to existing dwelling house.
- 

## **Appeal B Ref: APP/B4215/X/20/3248092**

### **31 Albert Hill Street, Manchester M20 6RF**

- 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 Ms Rvmeet Sokhi against the decision of Manchester City Council.
  - The application Ref 125846/LP/2020, dated 2 January 2020, was refused by notice dated 28 February 2020.
  - 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 rear dormer and roof alteration to the bathroom.
- 

## **Decision**

1. The appeals are allowed and attached to this decision are certificates of lawful use or development describing the proposed operations which are considered to be lawful.

## **Procedural Matters**

2. Due to travel restrictions currently in place as a result of the COVID-19 pandemic I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have taken their views into account and am satisfied that the appeal can be determined on the evidence before me.
3. Mr Avtar Sokhi is identified as the appellant on the application form for Appeal A, Ref APP/B4215/X/19/3243654. The appeal form for Appeal B, reference APP/B4215/X/20/3248092, identifies Mr Avtar Sokhi as the appellant. However, the application form identifies Ms Rvmeet as the appellant. It has been confirmed that Mr Sokhi is the agent and Ms Rvmeet is the appellant. I have

therefore taken the name of the appellant from the respective application forms.

4. Notwithstanding the appeal form submitted in respect of appeal A, from the evidence before me it is evident that the reason for the appeal is that the Council has refused to grant a Lawful Development Certificate for a proposed development. I have therefore dealt with the appeal on this basis.
5. The decision notice issued in respect of Appeal A Ref: APP/B4215/X/19/3243654 makes reference to the Town and Country (General Permitted Development) Order 1995 (as amended). It is evident from the Council's Statement that it assessed the scheme against the Town and Country (General Permitted Development) Order 2015 (as amended). I have therefore considered the appeal on this basis.

### **Applications for costs**

6. Applications for costs were made by the appellants, Mr Avtar Sokhi and Ms Rvmeet Sokhi against Manchester City Council. These applications are the subject of a separate Decision.

### **Background and main issue**

7. This appeal concerns two separate applications made under s192(1)(b) of the Town and Country Planning Act 1990 (as amended)(the 'Act'). Both proposals would involve extensions to the rear of the dwelling. The Council refused both applications because it was concluded that 'the proposed first floor rear extension does not constitute permitted development and is not in accordance with Part 1, Schedule 2, Class A.1(i) of the Town and Country (General Permitted Development) Order 2015 (as amended)<sup>1</sup>'.
8. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

### **Reasons**

9. An application under S192(1)(b) of the Act<sup>2</sup> seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.
10. The appeal property is a Victorian mid terrace, two storey property. At the rear the roof continues to form part of the single storey outrigger to the property. The original roof has two sets of eaves, one at the bottom of the cat-slide roof and the other above the first floor existing rear bedroom window. The Council advise that the building in its current form is original.

---

<sup>1</sup> The decision notice for appeal A made reference to the Town and Country (General Permitted Development) Order 1995 (as amended) and not the 2015 Order.

<sup>2</sup> Town and Country Planning Act 1990 (as amended)

11. For the Appeal A scheme, the roof would be extended to increase the height of the existing bathroom at the first floor and create a bedroom and bathroom in the roof. The main difference between the Appeal A scheme and the Appeal B scheme is that the Appeal B scheme would be stepped so that a flat roof is formed above the first-floor bathroom and only a bedroom would be created in the loft space. For both schemes, the extension would be set back 200mm from the existing wall and from the eaves.
12. The appellant has considered compliance in terms of Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended): The enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The appellant asserts that the proposal would comply with the GPDO in relation to volume and has provided calculations seeking to demonstrate this. The appellant has also drawn my attention to Permitted development rights for householders Technical Guidance 2017.
13. It is not disputed that the requirements set out under Class B would be met. However, whilst the Council accepts that the proposals should be considered under Class B of the GPDO, it asserts that they should also be considered under Class A<sup>3</sup> as the single storey outrigger would increase in height and would therefore be an upward extension of the dwelling itself and not just an alteration or addition to the existing roof.
14. The Council has drawn my attention to appeal decision APP/M5410/X/17/3171982. In this case, the Inspector held that the enlargement undertaken would need to be considered under Class A. Whilst I do not have full details of the case, I am not persuaded that it is comparable to the appeal schemes before me. The extension considered by the Inspector involved the removal of the rear off-shoot and its replacement by a third storey with a flat roof and resulted in the loss of the original eaves line on the rear off-shoot. The eaves of the appeal schemes before me would, by contrast, be reinstated and a setback of 200mm maintained.
15. The Council has also drawn my attention to APP/G3110/X/16/3149369. As with the previous appeal decision cited, I do not have full details before me. Nevertheless, I do not consider the appeal scheme considered by the Inspector to be comparable to the schemes before me. As with the previous appeal decision, external walls would be constructed on top of the first floor accommodation on three sides and was held to be an upward extension to the first floor of the house.
16. The Council has also drawn my attention to APP/V5570/X/14/2216242. This appeal decision was determined under different legislation and prior to the publication of the Technical Guidance. Furthermore, as with the above appeal decisions considered, it would appear that the eaves of the scheme would not be maintained.
17. Both parties have drawn my attention to appeal decision APP/B4215/X/19/3223275 at the site, decision date 14 October 2019. The development for which a certificate of lawful use or development was an L-shaped dormer extension to existing dwelling house. The Inspector found that

---

<sup>3</sup> Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended)

the enlargement would extend solely from the roof of the existing dwelling and be a substantial roof enlargement above the existing outrigger.

18. Although the Council considered the proposal under Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), the Inspector held that Class A was not applicable to the case and that the proposal should be considered under Class B of Part 1, Schedule 2 of the GPDO. Although the Inspector dismissed the previous appeal at the site, this was because she concluded that the requirement at B.2(b)(i) was not met and that the proposal would not be permitted development within Class B of the GPDO.
19. B.2 of the GPDO states that Development is permitted by Class B subject to the following conditions....(b) the enlargement must be constructed so that -(i) 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 – (aa) the eaves of the original roof are maintained or reinstated; and (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. Both appeal scheme A and appeal scheme B would comply with the requirement at B.2(b)(i) as the eaves of the original roof would be reinstated and a setback of 200mm from the eaves would be maintained.
20. Whilst I note the Council raised concern with the Planning Inspectorate regarding the Inspector' approach, I am not aware of any complaint by way of judicial review. Similar to the above appeal, the proposed enlargements would extend solely from the roof of the existing dwelling and would be substantial roof enlargements. Although the appeal schemes before me are different to that considered by the previous Inspector, the Inspector's finding that the proposal should be considered under Class B of Part 1, Schedule 2 of the GPDO is of relevance to my consideration of these appeals and I see no reason to depart from her conclusion in this regard. Furthermore, the appellant has drawn my attention to a series of decisions where Inspectors drew similar conclusions<sup>4</sup>.
21. Thus, for the reasons given above I conclude that the appeal schemes should be considered under Class B of Part 1, Schedule 2 of the GPDO and not Class A. It has been shown, on the balance of probability, that the proposals as a whole would be granted planning permission by the GPDO Article 3, Schedule 2, Part 1 Class B and are lawful for planning purposes.

## **Conclusion**

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant a certificate of lawful use or development was not well-founded and the appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*M Savage*

INSPECTOR

---

<sup>4</sup> APP/T5150/X/18/3213401, APP/G31100/X/17/3166798, APP/T5150/16/3164641, APP/B1605/X/15/3134171, APP/H1515/X/3003475, APP/T5150/X/14/3000214, APP/Q5300/X/09/2106877, APP/N5660/X/19/3220893



---

# 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 23 October 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and coloured 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:

On the balance of probability, the proposal would, as a whole, be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

*M Savage*

Inspector

Date 16 June 2020

Reference: APP/B4215/X/19/3243654

## **First Schedule**

Erection of L shaped dormer to existing dwelling house in accordance with drawing entitled 'L-Shaped loft conversion at 31 Albert Hill St, Didsbury M20 6RF Revision A Roof plan & Dimensions added'.

## **Second Schedule**

Land at 31 Albert Hill Street, Manchester M20 6RF

## 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.



# 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 2 January 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and coloured 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:

On the balance of probability, the proposal would, as a whole, be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

*M Savage*

Inspector

Date 16 June 2020

Reference: APP/B4215/X/20/3248092

## **First Schedule**

Rear dormer and roof alteration to the bathroom in accordance with drawing entitled 'Loft conversion and bathroom alteration at 31 Albert Hill Street., Didsbury M20 6RF Attic dormer & flat roof to existing bathroom Dec 2019'.

## **Second Schedule**

Land at 31 Albert Hill Street, Manchester M20 6RF

## 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 Certificates dated: 16 June 2020

**by M Savage BSc (Hons) MCD MRTPI**

**Land at: 31 Albert Hill Street, Manchester M20 6RF**

**References: APP/B4215/X/19/3243654 & APP/B4215/X/20/3248092**

Scale: NTS

