The Planning Inspectorate

Appeal Decision

Site visit made on 6 October 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal Ref: APP/J0405/X/20/3252297
18 Demoram Close Winslow MK18 3AY

- 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 Paul Vincent against the decision of Buckinghamshire Council.
- The application Ref 20/00610/ACL, dated 19 February 2020, was refused by notice dated 20 April 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 a garage and loft conversion.

Decision

1. The appeal is allowed in respect of the garage conversion and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful. The appeal is dismissed in respect of the loft conversion.

Main Issue

2. The main issue in this case is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether, on the date of the application, the proposed development was permitted under the provisions of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* as amended (the GPDO). Since there were 2 distinct elements in the application – the garage conversion and the loft conversion – I have addressed them separately.

Reasons

The loft conversion

3. The loft conversion includes the addition of a dormer and rooflights, but the dispute focuses on the dormer only. Although the GPDO has been amended since the appeal was made, those parts relevant to this case remain unchanged. Class B of Part 1 permits 'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof'. There are various limitations created by paragraph B.1 and conditions set out at B.2, but the sole point of dispute relates to B.1(d), which states that development is not permitted by

Class B if:

the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—

(i)40 cubic metres in the case of a terrace house, or

(ii)50 cubic metres in any other case;

4. In this case the house is not terraced so there is agreement that the 50 cubic metres limit applies in considering the proposed dormer. A garage extension has previously been added to the side of the house and this has resulted in the creation of additional roof space above it. Since it is a single storey addition, the roof space above the garage is separate from the roof space above the main, 2 storey element of the house. A small additional volume of roof space has also been created above a porch. The Council advises, and the appellant does not dispute, that including the roof space above the garage and porch in the calculation of 'the resulting roof space' would mean the 50 cubic metres limit being exceeded. The question is whether or not the wording of Class B requires them to be included in the calculation.

5. Assistance in the interpretation of Class B is provided at Paragraph B.3, which says that *'For the purposes of Class B, "resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not'.*

6. Further assistance comes from the Government publication *Permitted development rights for householders - Technical Guidance*. While not part of the legislation, this is produced by the Government to assist in interpreting it, and I attach weight to it accordingly. The Guidance advises that:

Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance.

7. With that guidance in mind, it appears to me that the intention is to adopt a comprehensive approach in which all additional roof space, no matter where it is in the house, and irrespective of the means by which it was permitted, is taken into account in the calculation. That is consistent with the approach the Council has taken.

8. The appellant argues that there are no existing extensions that affect the original roof space in this instance. However, additional roof space has been created above the garage and porch. While these do not interconnect with the roof space above the original house, they can nevertheless be seen as an 'enlargement to the original roof space', since they have added to the totality of roof space at the property. While I accept that it is possible to attach a different meaning to the words of Class B, as the appellant has, the interpretation I have used seems to me to be more consistent with the Technical Guidance. Moreover, my finding on this matter is consistent with the other appeal decisions to which I have been referred. While not all those cases are fully comparable with this one, the inspector in each case included all additional roof space in the calculations. In 2 of the cases (APP/N2345/X/19/3233531 and APP/G3110/X/10/2130415) the dispute was very similar to the one before me.

9. The appellant argues that the appeal decisions are 'inconsistent with the general interpretation of Class B as can be seen in hundreds of S192 decisions up and down the country, as well as within this very authority'. However, I have been provided with little evidence to support that view. Although an example has been provided of a case in which Aylesbury Vale District Council (as it then was) interpreted the matter differently[1], it is evident that the Council has since reviewed its understanding of the matter in the light of appeal decisions it has encountered. The appellant has provided an extract from an email in which a Council planning officer expresses doubts about the logic of the interpretation in the appeal cases but I am not persuaded that those doubts are well-founded and, in any event, they did not change the approach the Council ultimately adopted.

10. I have noted the appellant's reference to the Explanatory Memorandum to *The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008.* However, the quote provided relates to the effect of a roof extension on whether a planning application would be required for a subsequent ground floor extension, and gives no assistance in interpreting matters in the very different situation that arises in this appeal.

11. I have noted the suggestion of the need (in the event of my preferring the Council's interpretation of the matter) for amendments to the Technical Guidance or the GPDO, but that is beyond my remit in determining this appeal.

12. For these reasons I conclude that the Council's decision in respect of the loft conversion was well-founded.

The garage conversion

13. There is no dispute relating to the garage conversion. The Council assessed it and considered that those works which amounted to development were permitted by Class A of Part 1 of Schedule 2 to the GPDO. I have no reason to reach a different view. Since s193(4) of the Act allows a certificate to be issued for some elements of a scheme where two or more operations are proposed, a certificate could have been issued for the garage conversion in this case. To that extent, the Council's decision was not well-founded.

Conclusion

14. 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 loft conversion was well-founded and that the appeal in respect of that element should fail. The Council's refusal to grant a certificate in respect of the garage conversion was not well-founded and the appeal should succeed in that respect. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended and issue a certificate for that element of the proposal.

Peter Willows

INSPECTOR

[1] 20//00184/ACL

The Planning Inspectorate

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 19 February 2020 the operation 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:

On the date of the application those works comprising development were permitted by Class A of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Peter Willows

Inspector

Date: 16 November 2020

Reference: APP/J0405/X/20/3252297

First Schedule

Garage conversion

Second Schedule

Land at 18 Demoram Close Winslow MK18 3AY

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 operation 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 not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 November 2020

by P H Willows MRTPI

Land at: 18 Demoram Close Winslow MK18 3AY

Reference: APP/J0405/X/20/3252297

Scale: Not to scale

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