



Appeal Decision

Site visit made on 6 October 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2020

Appeal Ref: APP/K0425/X/20/3252747

Land at 45 White Close, High Wycombe HP13 5ND

- 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 & Mrs Dunn against the decision of Buckinghamshire Council.
 - The application Ref 20/05496/CLP, dated 25 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 double hip to gable conversion, chimney removal and installation of roof lights.
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Summary Decision: The appeal is allowed and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Procedural Matters

1. The application in this case was made on Wycombe District Council forms. Since the submission of the application Wycombe District Council has merged with neighbouring Councils to become Buckinghamshire Council. The decision notice was, therefore, issued by Buckinghamshire Council.
2. The plans submitted with the application include an existing plan of the building on site. However, this plan (no LR_19_45WHITECLOSE_Col_02 Rev C) showed the same side elevation (labelled elevation A) twice and did not include the side elevation B. Following a request for an amended plan showing both existing side elevations, an amendment to the above-referenced plan was received by email on 5 October 2020 showing both existing side elevations A and B. The appeal has been determined on the basis of this amended plan.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if, on an 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; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development

referred to in the application would be lawful if begun on the date the application was made.

4. It is the appellant's case that the extension to the roof of the dwellinghouse as referred to in the application would be permitted by Class B, Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). This permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
5. There is no dispute between the parties that the building would accord with the criteria set out in Class B.1. of the Order. There is also no dispute that the installation of the roof lights and the removal of the chimney accord with Classes C and G respectively of Part 1 of the Order. I see no reason to take a different view in these respects.
6. The parties' dispute in this case is whether or not the works proposed would include the addition or alteration to the roof of the dwellinghouse as permitted by Class B, Part 1, Article 3, Schedule 2 of the Order. This is the main consideration in this case.

Reasons

7. The appeal property is a two storey detached dwelling with a basement accessed at the rear and a two storey side addition. The main roof structure is a hipped roof that has a short ridge running from the front roof slope to the rear. The ridge of the roof of the two storey addition is lower than that of the main roof structure and extends from the side roof slope.
8. The development would maintain the roof slope on the front and rear elevation, but these would be made wider to accommodate the additional volume proposed either side.
9. The Council suggest that little of the existing roof structure will remain as a result of the propose development. As such, the works would not amount to an addition or alteration to the existing roof. It is suggested that for this reason the development would not benefit from the provisions of Class B.
10. I note that the development would result in the removal of the side roof slopes of the main roof structure and that the existing ridge of the roof (running from the front roof slope to the rear) would be replaced with a rectangular flat roof section described by the appellant as a crown. I also note that the chimney would be removed from the rear roof slope. Notwithstanding this, the plans submitted confirm that the existing front and rear roof slope together with all roof slopes comprised in the side addition would be retained. Furthermore, the appellants confirm in their submissions that the internal structures supporting the existing front and rear roof slopes would also be retained and that this would be extended either side to meet the new gables.
11. The Council suggest that structural information is required to demonstrate how the above would be achieved. However, evidence provided by the appellant is sufficient to demonstrate that the proposed development can be constructed as an extension to the existing roof.
12. Notwithstanding this, the LDC granted in this case is for the development proposed in the application. It would not apply to development that is

materially different from the proposed scheme, including development that would involve the replacement of the roof entirely or the replacement of elements of the roof that are indicated as being retained on the information submitted.

13. Whilst reference is made to another LDC application in the area, the scheme in that case differs significantly from that subject of this appeal. It is not, therefore, relevant to the determination of this appeal. I have determined this appeal having regard to the particular circumstances in this case and the evidence that is before me.
14. Having regard to all of the above, I am satisfied that on the balance of probability the development as proposed would include the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. It would, therefore, be permitted by Class B, of Part 1, Article 3, Schedule 2 of the Order.

Conclusions

15. 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 'a double hip to gable conversion, chimney removal and installation of roof lights' was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

16. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is found to be lawful.

J Moss

INSPECTOR



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 25 February 2020 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 development consisting of a double hip to gable conversion, chimney removal and installation of roof lights would have included the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The proposed development would not have fallen within any of the criteria set out in classes B.1., C.1., or G.1. of The Town and Country Planning (General Permitted Development) (England) Order 2015 and would, therefore, have been permitted by classes B, C and G of Part 1, Article 3 of Schedule 2 of the 2015 Order.

Signed

J Moss

INSPECTOR

Date:

Reference: APP/K0425/X/20/3252747

First Schedule

Double hip to gable conversion, chimney removal and installation of roof lights.

Second Schedule

Land at 45 White Close, High Wycombe HP13 5ND

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 as amended (the 1990 Act).

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, would not have been 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, 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:

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Scale: Not to scale

