
Appeal Decision

No site visit made

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/Y1945/X/20/3254726
17 Hillingdon Road, Watford WD25 0JQ

- 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 J Higgins against the decision of Watford Borough Council.
 - The application Ref 19/01480/LDC, dated 23 December 2019, was refused by notice dated 26 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 hip to gable end, rear dormer and 3 no. rooflights to front elevation.
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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 operation which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr J Higgins against Watford Borough Council. This application is the subject of a separate decision.

Procedural matter

3. Both parties have agreed that a site visit was not necessary in this case and I would concur. I have considered this appeal on the basis of the submissions made.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate was well founded.

Reasons

5. The property is a semi-detached dwelling with a constructed two-storey rear extension. The rear extension was granted planning permission in 1984. The Council has refused the LDC on the basis that the works would involve the removal of the roof of the two-storey extension and that this would mean that the extension would no longer comply with the planning permission and would be liable to enforcement action.

6. The proposed work would involve altering and constructing the existing hip roof of the dwelling to form a gable end, the removal of the existing hipped roof rear extension to form a flat roof, the construction of a rear flat roof dormer protruding from the roof slope of the dwelling and the installation of three rooflights in the front roof elevation of the property.
7. There is no dispute between the parties that the proposed work would comply with the conditions set out in Class B (B.1 – B.4) and Class C (C.1 - C.2) of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015. From the available evidence, I have no reason to depart from these views.
8. The Council's concern is whether the removal of the rear extension roof as a result of the proposed work would mean that the extension no longer complies with the granted planning permission. The Council refers to the grant of permission by reference to the application and submitted particulars and as shown on the plans accompanying the application. It is the Council's contention that there is no requirement for a condition to state that the development must be carried out in accordance with the approved plans because the operative description of the planning permission refers to the plans that accompanied the application.
9. The 1984 planning permission has two conditions, one an implementation period for works to start, the second relates to materials to match the external appearance of the existing house in colour and texture.
10. Section 57 of the Act as amended sets out that planning permission is required for development, and Section 55(1) defines what is the meaning of development. Planning permission for operational development authorises the carrying out of the whole development, and that permission is not spent until the development is complete. In this instance, planning permission for the two-storey rear extension was completed as a matter of fact and degree and there is no available evidence to indicate that this is not the case.
11. In all probability, the grant of planning permission for the operational development of the two-storey rear extension is spent as what has been permitted has been completed. The works to remove the two-storey extension roof is not in contravention of any condition which has a continuing effect. Therefore, once the extension was completed in accordance with the planning permission there is no further condition or restriction preventing further development taking place.
12. In my view, paragraph 011¹ of Planning Practice Guidance on LDC (How does a lawful development certificate relate to conditions on an existing planning permission?) does not apply in this case, since there is no condition on the permission that has a continuing effect in relation to the existing two-storey rear extension.
13. The works to remove the extension roof is not necessarily development, as this could be considered as carrying out maintenance, improvement, or other alteration of any building under Section 55(2)(a) of the Act as amended. The Council could not enforce against maintenance works.

¹ Reference ID: 17c-011-20140306

14. Similarly, the removal of the two-storey roof of the extension to carry out works that is construed as permitted development could not be enforced against because the works would not require planning permission, as is set out in Section 191(2)(a).
15. I conclude on the available evidence that the proposed work is as a matter of fact and degree permitted by Class B (B.1 – B.4) and Class C (C.1 - C.2) of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, and that planning permission is not required for it.
16. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate 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.

Iwan Lloyd

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 23 December 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 development shown on drawing no. JH/17/101 Revision A would be permitted development by virtue of Article 3, Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Iwan Lloyd - Inspector

Date 22 February 2021

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First Schedule

Hip to gable end, rear dormer and 3 no. rooflights to front elevation

Second Schedule

Land at 17 Hillingdon Road, Watford WD25 0JQ

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 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, 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: 22 February 2021

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Land at: 17 Hillingdon Road, Watford WD25 0JQ

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Scale: Not to scale

