
Appeal Decision

Site visit made on 25 May 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/W2465/X/20/3264078

35 Lindsay Road, Leicester LE3 2EJ

- 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 Singh against the decision of Leicester City Council.
 - The application Ref 20201708, dated 6 September 2020, was refused by a notice dated 10 November 2020.
 - The application was made under section 191(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 construction of hip to gable roof at side; box dormer at rear of property (Class C3).
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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 existing operation which is considered to be lawful.

Procedural Matter

2. The description of the development set out in the banner heading above is taken from the appeal form, and it is also the description on the Council's decision notice. I consider it to be a clearer description than that which was set out on the original application form and it accurately describes the development which is shown on the plans submitted with the application and the development which I saw had been constructed on my site visit.

Reasons

3. Section 191(4) of the Town and Country Planning Act, 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the main issue is whether the Council's refusal was well-founded.
4. 35 Lindsay Road is a two-storey semi-detached property in use as a single dwellinghouse. The development for which a certificate is sought comprises an extension to the roof, including the construction of a hip to gable roof at the side and a box dormer within the rear roof slope.

5. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted by Class B, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the restrictions set out in B.1 and conditions at B.2.
6. The Council Officer's report confirms that the roof extensions would meet the restrictions set out in Class B.1.(a), (b), (c), (e), (f), (g) and (h) of the GPDO, and from the evidence provided with the application and in support of it, I see no reason to take a different view. However, the Council consider that the roof extension would not meet the requirements of Class B.1 (d) and would exceed the volume restriction of 50 cubic metres. Although, the details submitted with the original application calculate the cubic content of the resulting roof space from the hip to gable extension and rear dormer to be 49.4 cubic metres, the Council consider that the volume of the roof of an existing single storey rear extension should be included in that calculation. Adding the volume of that previous extension's roof space, the volume allowance of 50 cubic metres would clearly be exceeded, and it is the Council's view that the roof extension is not therefore permitted by Class B.1 (d).
7. Interpretation guidance is set out in B.3 of the GPDO and advises 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. Further clarification is set out in the Technical Guidance¹, stating that when calculating any additional roof space created by a roof extension, any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. It also makes it clear that the 'original roof space' is the roof space in the 'original building'.
8. Taking into account the guidance and interpretation set out above, the existing roof of the single storey rear extension which is not connected to the roof space of the original building cannot be considered to be a previous enlargement to the original roof space of 35 Lindsay Road. From the evidence before me and my own observations on my site visit, the hip to gable extension and rear dormer for which the certificate of lawful development is sought are the only enlargements to the original roof space of the appeal property. There is no dispute that their cumulative volume is 49.4 cubic metres and consequently, there is no conflict with Class B.1 (d) of the GPDO.

Conclusion

9. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of hip to gable roof at side and box dormer at rear of property (Class C3) was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

¹ Permitted development rights for householders, Technical Guidance, dated 2019 MHCLG

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 6 September 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of hip to gable roof at side and box dormer at the rear is "permitted development" falling within Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

Elizabeth Pleasant
Inspector

Date 14 June 2021

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First Schedule

Construction of hip to gable roof at side and box dormer at the rear of property (Class C3) (as shown on Location Plan and Proposed Plans and Elevations, Ref: PL35 A200 Rev A)

Second Schedule

Land at 35 Lindsay Road, Leicester LE3 2EJ

NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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 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 Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 June 2021

by **E Pleasant DipTP MRTPI**

Land at: 35 Lindsay Road, Leicester LE3 2EJ

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Scale: Not to Scale

