



Appeal Decision

Site visit made on 18 May 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2021

Appeal Ref: APP/G2815/X/20/3263188

40 Kingfisher Road, Thrapston, Northamptonshire NN14 4GP

- 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 Carl Webb against the decision of East Northamptonshire District Council.
- The application Ref 20/00827/LDP, dated 7 July 2020, was refused by notice dated 9 September 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is new dormers to front elevation to access bedrooms within the existing roof space conversion.

Summary of decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary matter

1. The description of the proposed development only mentions the dormer windows but drawing 4006/P1 also shows the insertion of 5 roof lights. These were recorded as part of the proposed operations in the Council's assessment of the application and I shall consider them too.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the building operations of inserting 3 roof lights in the rear roof slope, of constructing 2 dormer windows in the roof slope of the principal elevation, and of inserting 2 roof lights in the same roof slope would have been lawful if begun on the date of the application.

Reasons

3. Under section 191(2) of the Act an operation is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice in force. None of the operations are the subject of an enforcement notice, so it remains to be considered whether they would be immune from enforcement action.

The roof lights in the rear roof slope

4. Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) permits the

enlargement of a dwellinghouse by additions and other changes to its roof, subject to 8 limitations within paragraph B.1. The Council considers that none of these limitations apply and therefore that the roof lights are permitted by Class B, subject to compliance with the conditions in paragraph B.2.

5. However, the installation of roof lights may not result in the enlargement of a dwellinghouse, which is the subject of Class B. The proposed roof lights cannot be seen in the side elevation views in drawing 4006/P1, indicating they would not enlarge the dwelling. It is therefore appropriate to consider whether Class C of Part 1 of Schedule 2 to the Order (Class C), which permits other alterations to the roof of a dwellinghouse, subject to the limitations of paragraph C.1, applies instead.
6. Roof lights in nearby dwellinghouses protrude slightly beyond the plane of the roof slope and it may therefore be structurally necessary for the proposed roof lights to do so, notwithstanding the detail of drawing 4006/P1. However, limitation (b) of paragraph C.1 only precludes alterations that protrude more than 0.15m beyond the plane of the roof slope. In view of this, and as no other limitation of paragraph C.1 would apply¹, these roof lights are permitted by Class C and would have been immune from enforcement action if begun on the date of the application.

The dormer windows in the roof slope of the principal elevation

7. These windows would extend beyond the plane of a roof slope forming the principal elevation of the dwellinghouse. The Council refused to issue an LDC because it considered the principal elevation fronts a highway. If that is so, limitation (c) of paragraph B.1² applies and the dormer windows are not permitted by Class B. It is agreed that no other limitation applies.
8. A highway means a public right of way such as a public road and may include an unadopted street or private way. The appellant's home and 3 others are served by a driveway leading from Kingfisher Road and the appellant accepts that where the driveway is shared, it could be classed as a highway. The driveway is uniformly surfaced, including the final section leading through the appeal site to the appellant's garage. A post and rail fence and a hedge run the length of the northern boundary of the driveway, terminating at the appellant's garage. These features give the entire length of the driveway a unified appearance with the characteristics of a private way, and thus a highway. In this scenario, in which appearance is paramount, the principal elevation of the dwellinghouse fronts a highway and thus the dormer windows are not permitted by Class B.
9. Alternatively, and as the appellant contends, the driveway ceases to be shared, and becomes private once it enters his property. In this scenario, in which ownership and access rights are key, the principal elevation does not front a highway, limitation (c) does not apply, and the dormer windows are permitted by Class B.

¹ The dwellinghouse was not formed through a change of use under Class M, MA, N, P, PA or Q of Part 3 of Schedule 2 of the Order and was not permitted by Part 20 of Schedule 2 of the Order; no part of the alteration would be higher than the highest part of the original roof; and the alteration would not consist of or include the installation, alteration or replacement of a chimney, flue, soil and vent pipe, solar photovoltaics or solar thermal equipment.

² Any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway

10. A conveyancing plan confirms the appellant's private ownership of the final section of the driveway. However, the plan also shows that shared rights do not end at the boundary but continue a short way, in front of part of the principal elevation. With the second scenario adjusted to reflect this fact, the plane of the existing roof slope in that elevation partly fronts a section of the shared driveway. The shared driveway is a highway in both scenarios and even if it does not pass the entire principal elevation, the relationship is sufficient for limitation (c) to apply. Consequently, the dormer windows are not permitted by Class B.
11. Class C permits some alterations to the roof of a dwellinghouse that are not permitted by Class B. However, limitation (b) of paragraph C.1 precludes any alteration that protrudes more than 0.15m beyond the plane of any roof slope. As the proposed dormer windows would protrude further than this, they are not permitted by Class C. The Order contains no other provisions for roof alterations comprising dormer windows. The dormer windows therefore require planning permission and would not have been immune from enforcement action if begun on the date of the application.

The roof lights in the roof slope of the principal elevation

12. Drawing 4006/P1 confirms that these roof lights would be the same as those proposed in the rear roof slope and the Council considers them to also be permitted by Class C. I agree they are permitted by Class C, for the reasons given in my assessment of the proposed roof lights in the rear roof slope. Accordingly, their insertion would have been immune from enforcement action if begun on the date of the application.
13. While the Council has referred to the use of matching external materials, that is not a condition of the permission granted by Class C and it is not possible to impose such a restriction when issuing an LDC.

Conclusions

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the 2 dormer windows in the roof plane of the principal elevation was well-founded.
15. Section 193(4)(a) of the Act allows that where an application specifies two or more operations, an LDC may be issued for all of them or some one or more of them. Accordingly, I also conclude that the Council's refusal to grant an LDC in respect of the proposed roof lights was not well-founded and that the appeal should succeed to that extent. 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 use or development describing the proposed operations which are found to be lawful.

Mark Harbottle

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 7 July 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 reasons:

The proposed 3 roof lights in the rear roof plane and the proposed 2 roof lights in the principal roof plane are permitted development pursuant to Article 3 and Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Mark Harbottle

Inspector

Date: 22nd June 2021

Reference: APP/G2815/X/20/3263188

First Schedule

The insertion of 3 roof lights in the rear roof plane and 2 roof lights in the principal roof plane, as shown on drawing 4006/P1.

Second Schedule

Land at 40 Kingfisher Road, Thrapston, Northamptonshire NN14 4GP

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 Certificate dated: 22nd June 2021

by **Mark Harbottle BSc MRTPI**

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Not to Scale

