



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Appeal Ref: APP/Z4310/X/21/3272275

19 The Croft, Liverpool L12 5HB

- 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 Philip Lynch against the decision of Liverpool City Council.
 - The application Ref 20LP/2086, dated 21 August 2020, was refused by notice dated 17 December 2020.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is "loft conversion with rear dormer and alterations to roof from hip to gable".
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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.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. As such, I am not able to take account of the comments of an interested person since matters concerning loss of privacy and appearance would relate to planning merits.
3. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.

Reasons

5. The appeal property is a semi-detached house, which has been extended previously to the side and rear. The appellant is now seeking a loft conversion with a rear dormer extension and alterations to the hipped roof to form a gable. The appellant's case is that the proposed roof extensions would have a total volume of 46.56 cubic metres and so the development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

6. Class B grants deemed planning permission for development involving the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. Under B.1(d) 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.
7. In addition under B.1(e), development is not permitted if it would consist of or include - (i) the construction or provision of a verandah, balcony or raised platform, or (ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe.
8. The Council is of the opinion that the extension would not comply with B.1(d), because the property has previous extensions which are estimated to measure 78.7 cubic metres. It is argued that the addition of the proposed roof extensions would exceed the 50 cubic metres allowed.
9. The Technical Guidance¹ states that – “To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. ‘Original roof space’ will be that roof space in the ‘original building’, which means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date”.
10. Therefore, development is not permitted under paragraph B.1(d) if the cubic content of the resulting [from the enlargement to the] roof space would exceed the cubic content of the original roof space by more than 50 cubic metres. Previous extensions that did not result in an enlargement to the original roof space do not form part of that calculation.
11. On the basis of the appellant’s calculations for the roof space, which are not queried by the Council, the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres and so the development proposed would be permitted under Class B.
12. The Council further considers that the development would not comply with B.1(e)(i) because the plans show a Juliette balcony on the rear of the dormer window.
13. The Technical Guidance states that – “Alterations to the roof of a house for loft conversions involving the creation of balconies are not permitted development and will require planning permission. A balcony is understood to be a platform with a rail, balustrade or parapet projecting outside an upper storey of a building. A ‘Juliet’ balcony, where there is no platform and therefore no external access, would normally be permitted development”.
14. In this case, the plans show there would be no platform. As such, the Juliet balcony would also be considered permitted development.

¹ MHCLG – Permitted Development Rights for Householders: Technical Guidance, September 2019.

Conclusion

15. I find, therefore, that the development proposed would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the GPDO, and so it would be permitted development.
16. 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 loft conversion with rear dormer and alterations to the roof from hip to gable 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.

Debbie Moore

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 21 August 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 proposed would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the GPDO, and so express planning permission would not be required.

Signed

Debbie Moore

Inspector

Date: 08 July 2021

Reference: APP/X/ APP/Z4310/X/21/3272275

First Schedule

Loft conversion with rear dormer and alterations to roof from hip to gable

Second Schedule

Land at 19 The Croft, Liverpool L12 5HB

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 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: 08 July 2021

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Scale: NTS

