



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal Ref: APP/D1780/X/21/3275317

1 Middle Street, Southampton SO14 6FP

- 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 and Mrs Madon against the decision of Southampton City Council.
- The application Ref 20/01753/PLDC, dated 16 December 2020, was refused by notice dated 30 April 2021.
- 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 conversion of loft space to form habitable room incorporating rear dormer, dormer window to rear and 2 no velux rooflights to the front.

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. I consider that the 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

2. The main issue in this appeal is whether it has been shown that the proposal is granted planning permission by Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. It is for the appellants to show that an LDC should be issued in respect of the proposal, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains an end of terrace dwelling. At the rear of the dwelling is a two storey extension or outshoot, with a monopitch roof. The ridge line of the outshoot roof sits slightly below the eaves level of the main roof of the dwelling. The proposal involves constructing an L-shape dormer across most of the rear slope of the main roof and across the outshoot roof. In addition, two rooflights would be inserted in the front slope of the main roof.

5. The GPDO at Article 3, Schedule 2, Part 1, Class B, grants planning permission for the enlargement of a dwelling consisting of an addition or alteration to its roof. The reference to 'addition or alteration' makes it clear that to benefit from this Class, there must be a roof structure in situ which is being added to or altered; the right conferred by Class B does not extend to the demolition and reconstruction of the original roof. Whether something would amount to an addition or alteration to the roof of a dwelling is therefore a matter of fact and degree in every case. This means that before assessing whether the relevant conditions and limitations in Class B are met, it is first necessary to consider whether the proposal falls to be considered against that Class. A similar approach was adopted by an Inspector determining a recent appeal in respect of an LDC for proposed development at another location¹.
6. The submitted drawings show most of the original outshoot roof as being removed to accommodate part of the dormer. Even so, Class B refers to the roof of a dwelling as a whole. Nothing in Class B or the Government's Technical Guidance² implies that where a dwelling has a number of sections to its roof, for example as in this case a main roof with a lower outshoot, each section has to be treated separately. As a result, whether the proposal amounts to something more than an addition or alteration has to be considered in the context of the original roof of the dwelling as a whole, not solely the outshoot roof section.
7. I read the submitted drawings as showing that around half of the dwelling's original roof would be unaltered by the proposal. The drawings do not suggest that there would be other changes to the front roof slope beyond two rooflights, or that where the dormer is inset from the eaves on the main roof and outshoot, the original roof structure would not be retained. The description of the development applied for refers to a conversion, not removal of the roof. There is nothing before me to indicate that it would be impractical to construct the dormer without demolishing and rebuilding the majority of the original roof. Therefore, as a matter of fact and degree, it is not unreasonable to conclude that the proposal would involve no more than an addition or alteration to the original roof. In the recent appeal referred to above around three quarters of the original roof would have been removed and remodelled, clearly distinguishing that case on the facts from those in this appeal.
8. The dormer would not exceed any of the relevant limitations in terms of its size, height and location in Class B paragraph B.1. Also, it would not breach any of the conditions in paragraph B.2. As a result, the limitations and conditions of Class B are met. Similarly, the rooflights would meet the limitations and conditions of Class C, which grants permission for any other alteration to the roof of a dwelling.
9. Therefore, based on the available evidence and on the balance of probability I am satisfied that the proposal would be granted planning permission by the GPDO at Article 3, Schedule 2, Part 1 Class B and Class C and is lawful for planning purposes.

¹ Appeal Ref: APP/L5810/X/20/3257461.

² Permitted development rights for householders Technical Guidance MHCLG September 2019.

Conclusion

10. For the reasons given above I conclude that, on the evidence now available, the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

11. 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.

Stephen Hawkins

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 16 December 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

On the balance of probability, the proposal is granted planning permission by Article 3, Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: 2nd September 2021

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First Schedule

Conversion of loft space to form habitable room incorporating rear dormer, dormer window to rear and 2 no velux rooflights to the front
(as shown on the following drawing: DWG No 02)

Second Schedule

Land at 1 Middle Street, Southampton SO14 6FP

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: 2nd September 2021

by **Stephen Hawkins MA MRTPI**

Land at: 1 Middle Street, Southampton SO14 6FP

Reference: APP/D1780/X/21/3275317

Scale: Not to scale

