



Appeal Decision

Site visit made on 9 September 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 October 2021

Appeal Ref: APP/P0240/X/20/3263086 162 West Street, Dunstable LU6 1NX

- 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 Elliott Moore against the decision of Central Bedfordshire Council.
 - The application Ref CB/20/02976/LDCP, dated 21 August 2020, was refused by notice dated 14 October 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 described as: Proposed conversion of loft to habitable space including dormers to rear roof slopes and insertion of three rooflights to front roof slope.
-

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.

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, on the date of the application, the development proposed amounted to the enlargement of the house consisting of additions and alterations to its roof falling wholly within Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The proposed loft conversion includes the addition of roof lights to the front roof slope, but these are covered by Class C of the relevant part of the GPDO and are not controversial in this instance. Class B permits 'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof', and it is common ground that the development needs to be assessed against this class.
4. The dispute centres on whether the proposal amounts to more than additions/alterations to the roof covered by classes B and C. Permitted development provisions for the enlargement, improvement or other alteration of a dwellinghouse are set out in Class A, and the Council says that the development should be assessed against this class as well. There is no dispute

that, if the development falls wholly within classes B and C, the various limitations and conditions would be met. Equally, it is clear that the requirements of Class A would not be met if it is assessed against that class as well. Thus, my decision hinges on the question of whether or not the development falls wholly within classes B and C.

5. The appeal property is a 2 storey house with an 'outrigger' to the rear. The development would see the construction of a large box dormer on the main rear roof slope. This would link into a smaller addition above the outrigger. There is agreement that, on its own, the larger dormer to the main roof would be development permitted by Class B. Thus, the focus of the dispute is the proposed element above the outrigger.
6. The outrigger has a mono-pitched roof, much lower in height than the roof of the main dwelling. The addition to the top of this would form a bathroom. It would not extend above the whole of the outrigger, but only about half of it. Thus, it is not the case that an entire new storey would be added to the outrigger.
7. The development would involve the construction of sections of wall to raise the height of part of the outrigger (by up to 2.7m) but that does not, in itself, mean that the development cannot be regarded as an addition to the roof; other developments accepted as being roof alterations/additions (such as hip-to-gable conversions) also involve walls being raised in height significantly. In my view, the additions to the walls in this case are not so substantial as to place the development outside the category of an addition or alteration to the roof of the property.
8. Moreover, despite its lower height, the element above the outrigger would link physically and functionally with the new dormer on the main roof slope, with stairs allowing it to be accessed from the converted loft space. Indeed, the new bathroom appears primarily intended to serve the bedroom that would be created there. Thus, while the Council characterises the element above the outrigger as an extension, I regard it as an integral part of an addition to the roof of the property and part and parcel of the loft conversion.
9. For these reasons, I regard the development proposed as an addition/alteration to the roof of the property, falling wholly within classes B and C. There is no suggestion by either party that, assessed against those classes, it fails any of the limitations or conditions that apply, and nor do I consider that it does.
10. I have been referred to various appeal decisions by both parties and it is apparent that different Inspectors have taken different approaches regarding the interpretation of the requirements and conditions of Class B. In this case, however, the question is whether the development falls wholly within classes B and C rather than how to apply the various limitations within the classes. Consequently, those cases are of limited relevance.
11. The question of the relevant class arose in respect of appeal APP/G3110/X/17/3179870. In that case the Inspector concluded that the development would not fall squarely into the definition of an addition or alteration to the roof of the property but should be considered under Class A as well as Class B. However, my determination is made on the basis of the specific case before me. While the Council says the two schemes are similar, such cases are fact-sensitive and it might take little to tip a scheme into a different

permitted development class. I do not have full details of the other scheme but the Inspector noted that it would involve the creation of an additional storey above the existing two-storey outrigger, which suggests to me a more substantial addition, given that about half of the outrigger would remain at its existing height in the proposal before me.

12. I have noted the suggestion in another case (APP/Q1445/X/18/3209802) that a development could not be regarded as just an extension or alteration to a roof because it included the upward extension of a rear wall. However, I have no details of the scheme that was being assessed. For the reasons I have already given, a development cannot be ruled out as an alteration/addition to the roof simply on the basis that it involves adding to a wall; it depends on the detail of what is proposed. The Council has listed other appeal decisions which it says support its decision, but no details are provided.
13. In reaching my view I have had regard to the Government's *Permitted development rights for householders Technical Guidance*, which provides guidance in the interpretation of the GPDO. This makes clear that there may be a number of permitted development classes that are relevant to any one proposal. However, it does not provide any relevant guidance to assist in deciding whether a development of this nature falls within Class B. That, it seems to me, is a matter of judgment, based on the details of the proposal. As the Guidance explains, 'Given the very substantial variations in the design of individual houses, this guide cannot cover all possible situations that may arise'.
14. For the reasons given above I conclude, on the evidence now available, that, on the day of the application, the proposal amounted to a development falling wholly within, and permitted by, classes B and C. Consequently, the Council's refusal 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 and allow the appeal.

Peter Willows

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 operations fall wholly within classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the limitations and conditions that apply to those classes are met.

Signed

Peter Willows

Inspector

Date 6 October 2021

Reference: APP/P0240/X/20/3263086

First Schedule

Conversion of loft to habitable space including dormers to rear roof slopes and insertion of three rooflights to front roof slope, as shown on Drawing Number 220089/02 Rev A.

Second Schedule

Land at 162 West Street, Dunstable LU6 1NX

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: 6 October 2021

by **P H Willows BA MRTPI**

Land at: 162 West Street, Dunstable LU6 1NX

Reference: APP/P0240/X/20/3263086

Scale: NTS



Ordnance Survey (c) Crown Copyright 2020. All rights reserved. Licence number 100022432