



Appeal Decision

Site visit made on 4 October 2021

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

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/A0665/X/21/3276271

Hobbit Hollows, Kingsley Road, Kinglsey, Frodsham WA6 6TY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Wright against the decision of Cheshire West & Chester Council.
 - The application Ref 21/00783/LDC, dated 21 February 2021, was refused by notice dated 28 May 2021.
 - 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 described as "construct 2 dormers within 2 existing bedrooms to increase the useable floor space and headroom".
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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 Matter

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.

Background and Main Issue

3. The appeal property is a detached bungalow, which has had a previous loft conversion. A garage extension has also been built to the side of the original building.
4. The appellant is seeking confirmation that the construction of two dormer extensions, to the side facing roof slope, would be 'permitted development'. Their case is that the proposed roof extensions 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).
5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.

Reasons

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. B.3 states 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. Within paragraph 2(1) of the GPDO "cubic content" is defined as the cubic content of a structure or building measured externally.
7. The Council is of the opinion that the extensions would not comply with B.1(d), because the property has previous extensions. There are two previous planning permissions, which the Council claims provided additional roof space – (a) two dormers, which would amount to approximately 3.79 cubic metres¹; and (b) the erection of an attached garage providing roof space of approximately 47.63 cubic metres². It is stated that the addition of the two dormer extensions now proposed would add a further 24 cubic metres. As a result, it is argued that the combined total would exceed the 50 cubic metres allowed under permitted development rights.
8. The Technical Guidance³ 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". In other words, previous extensions that did not result in an enlargement to the original roof space, that being the roof of the building as it existed when the bungalow was built, do not form part of the allowance.
9. As such, the roof space of the garage extension is not relevant since it was not an enlargement to the original roof space of the house. It was an extension with a roof, as opposed to being an enlargement to roof space. According to the Council's calculations, the combined total of the previously approved extensions to the original roof space (3.79 cubic metres), plus those now proposed (24 cubic metres), would not exceed the maximum set out in B.1(d).
10. On the basis of the Council's calculations for the roof space, 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.

¹ Ref APP/2001/0781.

² Ref APP/2002/0477.

³ MHCLG – Permitted Development Rights for Householders: Technical Guidance, September 2019.

Conclusion

11. 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.
12. 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 the construction of 2 dormers within 2 existing bedrooms to increase the useable floor space and headroom 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 dated 21 February 2021 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 it would be permitted development.

Signed

Debbie Moore

Inspector

Date: 14 October 2021

Reference: APP/A0665/X/21/3276271

First Schedule

"Construct 2 dormers within 2 existing bedrooms to increase the useable floor space and headroom"

Second Schedule

Land at Hobbit Hollows, Kingsley Road, Kinglsey, Frodsham WA6 6TY

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: 14 October 2021

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Scale: NTS

