
Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2021

Appeal Ref: APP/Q5300/X/21/3269499

24 Roundhill Drive, Enfield EN2 7RL

- 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 David O'Brien against the decision of the Council of the London Borough of Enfield.
 - The application Ref 21/00007/CEA, dated 4 January 2021, was refused by notice dated 19 February 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 loft conversion.
-

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 found to be lawful.

Procedural Matters

2. The Planning Inspectorate initially intended for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient evidence to understand the nature of the site and surrounding area given the points in dispute. On that basis, as the appointed Inspector I consider I can proceed to a decision on the evidence before me.
4. The Council's Officer Report indicates that the description of the LDC application was 'side dormers with rear rooflight in addition to new window on front and rear elevations'. However, the description on the application forms is 'loft conversion'.
5. Either way, the Council sought to agree a revised description with the appellant of 'front, side and rear dormers, windows in front and rear gable ends and raising of soil vent pipe'. However, the appellant did not agree to the change in description. Thus, the description on the Council's decision notice is 'side dormers with rear rooflight in addition to new window on front and rear

elevations'. The appeal form gives another different description of 'loft conversion comprising two side dormers for existing residential use.'

6. There is no equivalent power to that set out under section 191(4) of the 1990 Act for the Council or an Inspector to modify the terms of an LDC application under section 192. It is for the appellant to propose the operation that they wish to ascertain the lawfulness of. Whilst in practice, the terms may be modified where the parties agree, that is not the case here. As such, I take the description as that given on the initial application at the outset, that being 'loft conversion'.
7. Nevertheless, it is incumbent on me to ensure a degree of precision relevant to the purpose of a certificate issued under section 192, ensuring that no party would be prejudiced in doing so. Thus, it seems to me that an appropriate description of the development for which an LDC is sought would be loft conversion including the erection of dormer windows. This would not prejudice either the Council or the appellant, since both have referred to dormer windows in their own proposed descriptions. Also, the omission of reference to the soil vent pipe would ensure the appellant would not be prejudiced since they did not agree to its inclusion.

Main Issue

8. The planning merits of the proposed development are not relevant in an appeal against a refusal of an LDC application. The consistency or otherwise of the Council's decision with others it has made are therefore not a matter which holds weight.
9. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded. In this case, particular regard is to be had as to whether the proposed development would be granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

10. The appeal property comprises a two-storey dwellinghouse. The property is sited on the end of a terrace of four dwellings. It has a dual pitched roof at a right angle to the road, such that the gable wall of the property addresses the highway. Nevertheless, on one side where the property adjoins 22 Roundhill Drive, the roof ties into the dual pitched roof of the remainder of the terrace which is orientated facing the road. This creates roof valleys either side of the ridge where the two roofs adjoin one another.
11. The proposal includes three dormer windows. One would be located on the roof slope facing the adjacent property, No 26. The other two would be located on the roof of the property either side of the ridge with the adjoining property No 22.
12. Article 3(1) of the GPDO grants planning permission for those classes of development set out as 'permitted development' in Schedule 2. Part 1 deals with development in the curtilage of a dwellinghouse. Class B of Part 1 sets out that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted, subject to the limitations in B.1. B.1(c) states that development is not permitted under Class B if 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.

13. The Council refused the LDC application on the basis that the dormers would extend beyond the plane of the existing roof slope forming the principal elevation of the dwellinghouse.
14. The GPDO does not define the term principal elevation. The Permitted Development Rights for Householders Technical Guidance 2019 published by the then Ministry of Housing, Communities and Local Government, provides guidance on interpreting the term for the purposes of the GPDO.
15. The Technical Guidance sets out that in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It goes on to say that it will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. It then states that, usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
16. In this case, the main highway serving the house is Roundhill Drive. That part of the dwelling which fronts the main highway is the gable wall of the property. Whilst it does not contain the access door of the property, the gable wall does contain a central bay window at ground floor and a central window at first floor above. The windows reflect those of the property at the other end of the terrace and reflect the orientation of the fenestration of the terrace as a whole which presents itself towards the highway. In describing the property, it seems to me that one would usually refer to the gable wall facing the road as the front of the house. As a result, I am satisfied that the gable wall of the property which faces the highway comprises the principal elevation. The orientation of the roof slopes on which the dormers are proposed can be thus characterised as forming the side elevation of the property.
17. Moreover, even were I to conclude that the dormers would be located on roof slopes which form the principal elevation of the dwellinghouse, they must also be located on roof slopes which front a highway in order to fall under the limitation in B.1.
18. The Technical Guidance states that the extent to which an elevation of a house fronts a highway will depend on factors such as the angle between the elevation of the house and the highway, and the distance between the house and the highway.
19. In this instance, both roof slopes are a short distance from the highway, with the house set back behind an open front garden. The roof can be clearly seen from the highway at angled vantage points.
20. Nevertheless, the Technical Guidance states that if the angle between the house and the highway is more than 45 degrees, then the elevation will not normally be considered as fronting a highway. In this instance the roof slopes in question are both at a 90 degree angle to the highway.
21. Furthermore, the roof slope on which the dormer is proposed faces the side of No 26. Taking an ordinary definition of the term "front", it is clear that the roof

slope does not face directly nor have the most forward part of their arrangement, facing towards the highway.

22. The only exception to this would be roof valley, where the property adjoins No 22 upon which one of the dormer windows is located. Whilst part of this roof valley faces towards the highway, it does not, for the reasons given above, form part of the principal elevation of the house.
23. As a result, taking all of the above into account, I consider the proposed dormer windows would not extend beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and front a highway.
24. There is no indication from either party that the dormers would fall within any other limitation under section B.1 and I have no reason to conclude otherwise. Nor do I have any evidence that the development would not meet the conditions set out under section B.2.
25. Consequently, I conclude that the loft conversion including dormer windows would be permitted development under Class B of Part 1 of Schedule 2 of the GPDO and would therefore be granted planning permission by virtue of Article 3(1). Thus, on the date the application was made, the development would have been lawful.

Conclusion

26. 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 a loft conversion including the erection of dormer windows 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.

J Whitfield

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 4 January 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 operations would be granted planning permission by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development permitted under the provisions of Class B of Part 1 of Schedule 2.

Signed

J Whitfield
Inspector

Date 02 November 2021

Reference: APP/Q5300/X/21/3269499

First Schedule

Loft conversion including the erection of dormer windows

Second Schedule

Land at 24 Roundhill Drive, Enfield EN2 7RL

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:

by J Whitfield BA (Hons) DipTP MRTPI

Land at: 24 Roundhill Drive, Enfield EN2 7RL

Reference: APP/Q5300/X/21/3269499

Scale: NTS

