

Appeal Decision

Site visit made on 21 September 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/M5450/X/21/3276493
26 Broadcroft Avenue, Stanmore HA7 1PB

- 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 Vimal Hirani against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/4643/20, dated 18 December 2020, was refused by notice dated 19 March 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 Construction of a porch.
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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 extent of the proposed operation which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Vimal Hirani against the Council of the London Borough of Harrow. This application is the subject of a separate Decision.

Procedural Matter

3. I have taken the details for the header above from the LDC application form. The Council's decision notice describes the proposed development as follows: 'Front Porch'. Under section 192 of the Town and Country Planning Act 1990 as amended, there is no unilateral power to alter the terms of an LDC application, but it may be modified by agreement. Although both descriptions are essentially the same, as I have been given no evidence to show that the alteration was agreed I will evaluate the proposal on the basis of the description in the application form.
4. The address on the Appeal Form omits the word 'Avenue'. As this is consistently shown on the other documents, I have taken this to be an error and have referred to Broadcroft Avenue in my decision.
5. There was a minor discrepancy in the drawings that were submitted to the Council. I wrote to the Appellant on 7 October explaining this and requesting

the submission of revised drawings. An revised, and accurate, drawing¹ was received from the Appellant on 14 October, drawn by another draftsman. This was forwarded to the Council for comment, with a deadline of 26 October; it made no further comment.

Reasons

6. The main issue is whether the Council's decision to refuse the LDC was well-founded.
7. 26 Broadcroft Avenue is a semi-detached property located on the corner of that street and Anmersh Grove. It has gardens to its front and rear and the evidence shows that the property has been subject to extension.
8. The development that is the subject of the appeal is the addition of a porch on the front elevation of the property.
9. The appeal turns on within which class of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which I refer to as the 'GPDO', the proposed development lies. Briefly, the Appellant's case is that as what is proposed is a porch, it falls to be considered under the terms of Class D, 'Porches'. For its part, the Council contends that it is an extension to the property that should rightly be considered in the light of Class A, 'Enlargement, improvement or other alteration of a dwellinghouse'.
10. The Council's reason for refusing to issue a certificate was that the proposed porch would link into an existing single storey front and side extension, and would extend beyond a wall which fronts a highway and forms the principal elevation of the original dwellinghouse. Given this, the Council considers the proposed development to be an extension to the dwellinghouse which should be assessed under Class A.
11. Notwithstanding the errors in the drawings that I identified in my correspondence with the parties, the form of development referred to by the Council is shown on drawings A3/676-03 and A3/676-06 that were originally submitted with the application. It is also shown in the revised drawing.
12. It appears that part of the extension that has already been added to the side and front of the dwellinghouse is tantamount to a porch. This runs between, and links, a bay window and a garage. It is proposed that this would be removed and be replaced by the proposed porch.
13. If this proposed development were to fall under Class A, by reason of being attached to the earlier extension, the Council's position would be correct. It would not be permitted development as it would result in an extension beyond a wall which forms the principal elevation of the original dwellinghouse.
14. However, the permitted development right under Class D reads '*The erection or construction of a porch outside any external door of a dwellinghouse*'. The key words from this class, in respect of this appeal, is that the permitted right relates to "*any external door*".
15. Whilst being attached to an earlier extension, the construction of the porch would be a distinct and separate operation from it. What is proposed is clearly

¹ 0042-BDB-05-001-ARC 'Front Porch Plans and Elevations Existing and Proposed'

a porch that would serve an external door. It falls to be assessed against the permitted development right conferred by Class D, which is the relevant class for this development. The right in this class is subject to limitations; should a porch not accord with these, it would not be permitted development. In its Delegated Report, the Council finds that the porch would accord with the size and siting limitations in Class D and I also find this to be the case.

16. I find that there is nothing in the wording of Class D to invoke the terms of Class A, should a porch be attached to a previous extension, neither has the Council drawn my attention to any case law or appeal decisions to lead me to find otherwise. Class D is a stand-alone permitted development right. In reaching my finding here, I have taken account of the Government's "Permitted development rights for householders - Technical Guidance"² .
17. Therefore, on the balance of probability and taking the available evidence into account, I find that the porch would be lawful under Class D of the GPDO.
18. For the sake of clarity, my decision is made with regards to Drawing No 0042-BDB-05-001-ARC, submitted to the Planning Inspectorate on 19 October 2021. I have attached a copy of this to the certificate.
19. For all of the above reasons and having considered all other matters, I conclude that the Council's decision to refuse the LDC was not well-founded. The appeal should succeed.

Roy Curnow

Inspector

² MHCLG September 2019

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 18 December 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 Location Plan and shown on Drawing 0042-BDB-05-001-ARC 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, based on the evidence before me, the proposed porch would be permitted development as set out in Class D of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Roy Curnow
Inspector

Date: 12 November 2021

Reference: APP/M5450/X/21/3276493

First Schedule

Construction of a porch

Second Schedule

Land at 26 Broadcroft Avenue, Stanmore HA7 1PB

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.



Plans

These are the plans referred to in the Lawful Development Certificate dated: 12 November 2021

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Land at: 26 Broadcroft Avenue, Stanmore HA7 1PB

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Scale: Neither attached plan is to Scale

Location Plan



