



Appeal Decision

Site visit made on 2 November 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Appeal Ref: APP/G4620/X/21/3274667

129 Charlemont Road, West Bromwich, West Midlands B71 3EH

- 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 Sundeep Singh against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/21/65200, dated 27 January 2021, was refused by notice dated 13 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 an LDC is sought is proposed first floor rear extension and porch to front.
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Decision

1. The appeal is dismissed insofar as it relates to the proposed first floor extension.
2. The appeal is allowed insofar as it relates to the proposed porch, and I attach to this decision an LDC describing the proposed operations which I consider to be lawful.

Preliminary matters

3. Having considered the submissions from both parties concerning the proposed first floor rear extension, I am of the opinion that this part of the proposal should be described as an extension/addition to the roof. This is because the original property is a single storey bungalow, which has benefitted from a loft conversion and the proposed extension would be attached to that roof dormer, thereby extending the roof and loft conversion. I wrote to the parties asking for their comments. Whilst the Council did not raise any objection to my stance, the appellant maintained his argument that the development would be permitted development under the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
4. In these circumstances, I shall look at this part of the proposal against both Class A and Class B of Part 1 of the GPDO.
5. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority (the LPA) is provided with information satisfying it that the use or operations described in the application would be

lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

6. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
7. Planning Practice Guidance is clear that the applicant (or in this case the appellant) is responsible for providing sufficient information to support an LDC application¹.

Main Issue

8. The main issue is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is permitted development under Schedule 2, Part 1, Class A, B and Class D of the GPDO.

Reasons

The rear extension

9. The original property is a single storey detached bungalow. Various works have been undertaken at the property including: single storey side and rear extensions; and a loft conversion to one side of the building, which involved hip to gable extensions and the installation of a dormer roof extension on the rear.

Class A of the GPDO

10. The LDC application sought to demonstrate that the erection of an extension above the existing rear projection would be development permitted by Schedule 2 Part 1 Class A of the GPDO. Class A permits the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations.
11. Class A.3(c) of the GPDO states that where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.
12. The term 'pitch' is not defined in the GPDO either generally or specifically with respect to Part 1. It must therefore be given its ordinary meaning, that is the steepness of the slope. The development would not meet the criteria set out in Class A.3(c) as the proposed roof would be flat and would not therefore have the same roof pitch as that of the *original* (my emphasis) bungalow. Furthermore, the appellant has provided no explanation why it would not be 'practicable' to comply with this condition. Consequently, based on the evidence before me, it fails to comply with condition A.3(c).

Class B of the GPDO

13. It is my view that the property does not benefit from a first floor, but it does have floor space within the roof which has been converted and extended. The proposed rear extension would adjoin the rear element of the previously

¹ Lawful development certificates, paragraph: 006 Reference ID: 17c-006-20140306

extended roof space (the loft conversion) and sit above a rear extension. Under the provisions of Class B of the GPDO, a deemed planning permission is granted for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations.

14. Development is not permitted by Class B if (d) the cubic content of the "resulting roof space"² 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. From the plans, the roof space added by the previous loft conversion is 49 cubic metres. The proposed addition would extend this to more than 50 cubic metres.

15. Accordingly, Class B of the GPDO would not be satisfied.

The porch

16. It is proposed to build a porch to the front door of the property. The porch would be 270cm high and would measure 321cm in width and would be 93cm deep. This would provide a total area of 2.98sqm. The external ground area of the proposed structure would not exceed 3sqm, the height would be no more than 3m and no part of the structure would be within 2m of any boundary with the highway. Consequently, I consider that the proposed porch would be permitted development when considered under the provisions of Part 1, Class D of the GPDO.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the proposed rear extension was well-founded and that the appeal should fail in that respect. However, I find that the Council's deemed refusal to grant an LDC in respect of the porch was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

² the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.



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 27 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence shows that, on the balance of probability, the proposed porch described in the First Schedule and shown on the drawings titled: Original Ground Floor Plan with the proposed porch shown and annotated "Class D Porche (sic) permitted development" and "Side Elevation West View with Class D Porche (sic)" would be within the terms of Article 3 and Schedule 2, Part 2 Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S A Hanson
INSPECTOR

Date: 13 January 2022

Reference: APP/G4620/X/21/3274667

First Schedule

Proposed porch

Second Schedule

Land at 129 Charlemont Road, West Bromwich, West Midlands B71 3EH

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: 13 January 2022

by **S A Hanson BA(Hons) BTP MRTPI**

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Scale: Not to scale

