



Appeal Decision

Site visit made on 28 February 2022

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

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/M0655/X/21/3287958

11 Orchard Road, Lymm, Warrington WA13 9HH

- 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 James Holland and Mrs Rachel Holland against the decision of Warrington Borough Council.
- The application Ref 2021/39914, dated 5 August 2021, was refused by notice dated 22 September 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 "proposed loft conversion with new dormer roof to form new master bedroom".

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

1. 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. My decision rests on the facts of the case, and on relevant planning law and judicial authority. In this type of appeal the burden of proof lies with the appellant, with the relevant test being on the balance of probabilities.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

3. The appeal relates to a terraced house situated within a row of similar, two-storey houses. The appellant is seeking to erect a flat-roofed dormer extension that would extend the full width of the roof plane.
4. The Council states that the dormer extension would not fall within development permitted under Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which concerns the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Under B.1.(c) development is not permitted 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*. For the purposes of Part 1 - "highway" includes an unadopted street or private way.

5. The Council relies upon the 'Technical Guidance: Permitted development rights for householders' published by the Department for Communities and Local Government (September 2019). The Guidance clarifies that - *"highway" is a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order it also includes unadopted streets or private ways.*
6. Principal elevation has a meaning set out as follows – *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 will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.*
7. The address of the appeal property is Orchard Road, which is a short and apparently unadopted road running to the north of the terrace. It provides vehicular and pedestrian access to the houses and is used for car parking. I am satisfied that Orchard Road is a highway for the purposes of Part B. The dormer extension would be on the roof plane facing Orchard Road and so it would "front a highway". However, I must also consider whether the dormer extension would be situated on the roof slope forming the "principal elevation".
8. The terraced houses all have long gardens extending to the south. There is a footway between the houses and their gardens, which enables pedestrian access. The Council accepts that the elevations facing the gardens would have been the front originally. I agree with this assessment. The garden facing elevations are simple and attractive containing a balanced arrangement of fenestration and doors. In contrast, the Orchard Road facing elevations open into small yards with outbuildings and/or rear outriggers. These elevations are functional as opposed to presenting an attractive and uniform frontage.
9. Over the years, and probably due to an increasing reliance on cars, the occupants have tended to use the Orchard Road elevation as the main point of access. Some of the yard gates have numbers and many of the doors include letterboxes. I also understand that Orchard Road sets the postcode. However, despite the relationship with the roadway, the orientation of the houses remains unchanged and the garden facing elevations retain the features normally associated with the front.
10. In relation to the appeal property, it is clear to me that the garden facing or front elevation forms the principal elevation. This contains the main architectural features of the house, that being the main entrance door, opening into the hallway, and windows to the principal rooms, such as the sitting room and master bedroom. Access is via the footway that runs between the houses and their gardens. In contrast, the opposing elevation contains a doorway which gives access from the kitchen into the yard and then to the roadway. Although the Orchard Road facing elevation is used regularly for access and sets the postcode, I do not consider this to be the principal elevation as its architectural features are clearly those associated with the rear of the house.
11. Hence, although the proposed development would front a highway, it would not extend beyond the plane of the roof slope forming the principal elevation. As such, the dormer extension would be permitted development by virtue of Article 3 and Schedule 2, Part 1, Class B of the GPDO.

Conclusion

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 erection of a loft conversion with new dormer roof 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.

Formal Decision

13. 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.

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 5 August 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 be permitted development by virtue of Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Debbie Moore

Inspector

Date: 10 March 2022

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First Schedule

Proposed loft conversion with new dormer roof to form new master bedroom

Second Schedule

Land at 11 Orchard Road, Lymm, Warrington WA13 9HH

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: 10 March 2022

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

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Scale: NTS

