



Appeal Decision

Site visit made on 3 May 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/N0410/X/21/3285524

1 Arch Cottage, Amerden Lane, Taplow SL6 0EA

- 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 Max Willcocks against the decision of South Bucks District Council.
 - The application Ref PL/21/2659/SA, dated 2 July 2021, was refused by notice dated 20 October 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 described as an 'end of terrace house loft conversion'.
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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 Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. In particular, it is necessary to consider whether the proposal should be assessed against Class A and/or Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), at the date of the application; and whether the proposed extension would be granted planning permission by Article 3, Schedule 2, Part 1, Class A and/or B of the of the GPDO.

Reasons

4. The appeal property comprises an end of terrace two storey house. It includes an original two storey rear outrigger with a mono-pitched roof set at a lower level to the main roof of the house. The proposed development involves the construction of an L-shaped dormer. One arm of the L would extend across the main rear roof slope whilst the other arm would extend over the outrigger at a lower level due to the difference in levels between main house and outrigger. The proposed extension thus joins the main roof to the roof of the outrigger.
5. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits 'the enlargement, improvement or other alteration of a dwellinghouse', and Class B of Schedule 2, Part 1 of the GPDO permits 'additions etc to the roof of a dwellinghouse'. What is in dispute between the parties is whether the proposed loft extension over the outrigger falls within Class A and/or Class B.
6. It is the Appellant's case that the proposed development falls within Class B only, meeting all the specified limitations and conditions, and so is permitted development. However, the Council determined that the proposed development would fall under Class A, and given that the development would include an alteration to both the main roof and the roof of the original outrigger, the proposal would be contrary to limitation A.1 (k)(iv) of Class A.
7. Of particular relevance, is whether the conditions B.2(b)(i)(aa) and B.2(ii) of Class B, Schedule 2, Part 1 of the GPDO below should apply to the proposal or not. This turns on whether the development falls within the exception highlighted below, since there is no dispute the entirety of the eaves of the original roof are not maintained or reinstated and that the dormer over the outrigger extends beyond the outside face of an external wall.

B.2(b)(i)(aa)

Other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension, the eaves of the original roof are maintained or reinstated.

B.2(b)(ii)

Other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.

8. The Appellant draws attention to the Government's Technical Guidance (TG)¹ which provides a useful guide to interpretation of the GPDO. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for condition B.2(b) it states: "*The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other*". This strongly suggests to me that the exception applies in this case as it describes the situation as proposed here and indicates that whether the outrigger is original, or a later addition is

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

immaterial; as is whether the level of the pitch of the main roof and that on the outrigger are different.

9. A straightforward reading of the exception in B.2(b) is that “**an**” enlargement should join the original roof to the roof of a rear or side extension. The L-shaped dormer proposed here is a single discrete operation and thus amounts to a single enlargement. That single enlargement clearly joins the main roof of the house to the roof of the outrigger – in my view it is not appropriate to treat each arm of the L as if it were a separate development. Furthermore, the proposed extension is confined to the areas of the original roofs of the original dwelling.
10. In addition, the TG is describing the house’s rear projection or outrigger as falling within the meaning of “extension” whether original or not. That being the case, the description of *an enlargement which joins the original roof to the roof of a rear or side extension* applies and so neither condition B.2(b)(i)(aa) or B.2(b)(ii) is relevant to the proposal.
11. Similarly, for the reasons above and owing to the position of the proposal strictly contained on the roof of the original dwelling and outrigger only, I agree with the appellant that, the proposal falls to be considered solely under Class B, and not Class A of Schedule 2, Part 1 of the GPDO.
12. I note that the TG is guidance rather than statute, but it has been expressly prepared to give an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Most outriggers/rear wings on houses to which L-shaped dormers are attached are original and, as subsidiary features, they are often referred to as rear extensions. It would be illogical if L-shaped dormers were not permitted due to the differences in height between the main roof and the outrigger. Such a restriction would prevent most L-shaped dormers above outriggers, and if this were so there would be no reason for the TG to explicitly refer to L-shaped dormers under the explanatory text for condition B.2(b)
13. Whilst the Council has referred to other appeal decisions² in support of their conclusion that the proposal would constitute an extension above the outrigger and therefore Class A should apply, the TG offers guidance that is of direct relevance to this case. It is intended as an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO. Where the TG clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case. Furthermore, those other appeal decision referred to all pre-date the current TG, and therefore it is unclear whether those decisions had regard to the latest government technical guidance outlined above.
14. Therefore, for reasons outlined above, neither condition B.2(b)(i)(aa) or B.2(b)(ii) of Class B nor Class A of the GPDO are relevant to this appeal.

² Appeal Refs: APP/V5570/X/15/3135509, APP/G3110/X/15/3130966, APP/V5570/X/14/2220935, APP/G5750/X/08/2084460 and APP/X0415/X/18/3194957.

15. The Council has raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class B of the GPDO, in relation to “*additions etc to the roof of a dwellinghouse*” and from my reading of the drawings including the appellant’s measurements and calculations of proposed loft extension, I find no conflict against the relevant limitations and conditions of Article 3, Schedule 2, Part 1, Class B of the GPDO.

Conclusion

16. 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 “end of terrace house loft conversion” was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

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 2 July 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 is "permitted development" falling within Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

R Satheesan

INSPECTOR

Date 13 May 2022

Reference: APP/N0410/X/21/3285524

First Schedule

End of terrace house loft conversion

Second Schedule

Land at 1 Arch Cottage, Amerden Lane, Taplow SL6 0EA

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: 13 May 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

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Not to scale.

