



Appeal Decision

Site visit made on 20 April 2022

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

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal Ref: APP/Z4310/X/22/3290222

16 Liddell Road, West Derby, Liverpool L12 7HS

- 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 Christopher Murphy against the decision of Liverpool City Council.
 - The application Ref 20LP/2738, dated 26 October 2020, was refused by notice dated 28 April 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 a single storey extension to the rear and a dormer extension to the rear.
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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. In this type of appeal, the onus of proof is firmly upon the appellant. 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.
3. The appellant is seeking an LDC for a single-storey rear extension and a dormer extension to the rear-facing roof plane. The dispute between the parties concerns the interpretation of Schedule 2, Part 1, Class B1(d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. Class B grants deemed planning permission for development involving the enlargement of a dwelling house consisting of an addition or alteration to its roof, subject to conditions and limitations. Under B.1(d) development is not permitted by Class B if the cubic content of the resulting roof space 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. The appeal relates to a semi-detached house and so 50 cubic metres applies. B.3 provides that for the purposes of Class B, "resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original¹ roof space, whether permitted by this Class or not.

¹ Article 2 of the GPDO (Interpretation), states that original means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.

5. The Technical Guidance² advises that – “To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. ‘Original roof space’ will be that roof space in the ‘original building’, which means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date”.
6. There is no dispute that the volume created by the proposed hip to gable extension and the dormer extension should form part of the allowance. However, the Council is of the opinion that the roof space over the single-storey rear extension should also be included, in which case, the proposal would not be permitted development. The appellant takes the contrary view.

Main Issue

7. The main issue is whether the Council’s decision to refuse to grant a lawful development certificate (LDC) was well-founded.

Reasons

8. As set out above, the Council decided that the extension would not comply with B.1(d), because the addition of the proposed roof extensions, plus the roof space within the rear extension, would exceed the 50 cubic metres allowed. There has been an apparent change in the interpretation of this part of the GPDO by the Council. The appellant has provided decision letters and plans relating to five other roof extensions that comprised a rear dormer and a hip to gable alteration³. These all relate to semi-detached houses, each of which had existing single-storey extensions. The roof space of the single-storey elements was not included in the volumetric calculations in any of these cases and, if it had been, the LDCs would probably not have been issued. The Council has not provided any specific explanation for the inconsistency. However, it does refer to three LDC appeals in support of its current stance.
9. Appeal Ref APP/N2345/X/19/3233531, dated 20 November 2019, is especially relevant as it concerned an appeal against a refusal to grant an LDC for a proposed hip to gable roof enlargement and a rear dormer to a semi-detached house. The house had a previous single-storey rear extension with a pitched roof. The Council had refused the LDC application on the basis that the proposal did not comply with provision B.1(d)(ii). In that case, the dispute was whether or not the volume of the roof to the rear extension should have been included in the calculations, in assessing whether or not the proposal was lawful for planning purposes at the time of the LDC application. The Inspector concurred with the Council and dismissed the appeal.
10. The Inspector set out that the rear extension did not form part of the original house as defined above. He relied on the Technical Guidance, in particular, that part which says – “Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance” and went on to conclude that the extension enlarged the ‘original’ roof space to the house and should be included in the volumetric calculation.

² MHCLG – Permitted Development Rights for Householders: Technical Guidance, September 2019.

³ Refs 20LP/1643 dated 21 October 2020, 20LP/2422 6 October 2020, 20LP/1678 dated 25 August 2020, 20LP/1187 dated 27 May 2020 and 18LP/0395 dated 21 February 2018.

11. I disagree with this interpretation for the following reasons. The Technical Guidance is not determinative whereas the GPDO provides clarification as to what the term 'resulting roof space' means. It means the roof space as enlarged, taking into account any enlargement to the original roof space. The rear extension is not an enlargement to the original roof space, it is an unrelated extension with a pitched roof. I accept that the Council's stance may apply in a situation where there is an existing extension with a roof that joins onto the roof on the main house, as this could be considered an enlargement to the original roof space. However, I do not consider that the GPDO intended any extension, such as a single-storey rear or side extension or a porch, which are unconnected to the roof of the main house, to be included. This would have unintended consequences, such as a proliferation of flat roofed structures.
12. The second appeal to which the Council refers, ref APP/F2415/X/19/3230647 dated 20 March 2020, concerned a proposed L-shaped dormer extension. In this appeal, both parties were of the opinion that that the roof space of two previous single-storey extensions should be included in the volumetric calculations. The Inspector stated – "I have no reason to disagree". However, the dispute in that appeal concerned the accuracy of the calculations for the L-shaped dormer, which was the Inspector's focus. The inclusion of the roof space of previous extensions was not at issue and, therefore, I do take this decision as entirely relevant to the matters before me.
13. Appeal ref APP/G3110/X/10/2130415, dated 11 November 2010, has also been referred to. This related to a proposed front and rear dormer. That Inspector was faced with a similar situation in relation to the volumetric calculation and concluded that an "enlargement of the original roof space must be taken to apply to all extensions to the house which result in a greater volume of roof space, irrespective of whether or not they are physically connected to any other part of the house's roof". This is directly contrary to my own view and appears to be based, in part, on guidance which accompanied the 1995 GPDO. This is not set out in the decision letter but, in any event, it was guidance only. The Inspector also considered that a house may well be built with two or more elements with separate, unconnected roofs. As the roof space of these would form the 'original roof space', then it must follow that the roof space of any unconnected extensions should be included. Nonetheless, I return to my explanation above, that the rear extension is not an enlargement to the roof space but is an extension with a pitched roof.
14. In view of the above, I surmise that existing or proposed development, consisting of a roof alteration or addition, would not be permitted under paragraph B.1(d) if the cubic content of the resulting [from the enlargement to the] roof space would exceed the cubic content of the original roof space by more than 50 or 40 cubic metres, depending on the circumstances. Previous or proposed extensions that did not result in an enlargement to the original roof space do not form part of that calculation. This interpretation is consistent with my decision ref APP/Z4310/X/21/3272275, dated 8 July 2021.
15. On the basis of the Council's calculations, which are broadly in line with those of the appellant, the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres and so the development proposed would be permitted under Class B.

Conclusion

16. I find, therefore, that the development proposed would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the GPDO, and so it would be permitted development.
17. 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 a single-storey extension to the rear and a dormer extension to the rear 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.

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 26 October 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 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 fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the GPDO, and so it would be permitted development.

Signed

Debbie Moore

Inspector

Date 16 May 2022

Reference: APP/Z4310/X/22/3290222

First Schedule

Single-storey extension to the rear and a dormer extension to the rear

Second Schedule

Land at 16 Liddell Road, West Derby, Liverpool L12 7HS

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 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: 16 May 2022

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

Land at 16 Liddell Road, West Derby, Liverpool L12 7HS

Reference: APP/Z4310/X/22/3290222

Scale: NTS

