



Appeal Decision

Site visit made on 3 August 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/M5450/X/21/3280929

2 Howberry Road, Edgware, London HA8 6SP

- 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 Pankaj Kulkarni against the decision of the Council of the London Borough of Harrow.
 - The application Ref: P/0928/21, dated 5 March 2021, was refused by notice dated 30 April 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is dormer extension to side and rear of main roof. Rooflights to front.
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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.

Main Issue

2. The Council's reason for refusal concerns the limitations for permitted development set out in Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. In particular, what is the original dwellinghouse and whether the cubic content of the resultant roof space exceeds 50 cubic meters.
3. The main issue is whether the decision of the Council to refuse the application for a certificate was well founded.

Reasons

4. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Council's reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate '*on the balance of probability*'. The burden of proof is firmly on the applicant and the Council must be supplied with sufficient information to satisfy them that the proposed development is/was lawful at the date of the application.

Original Dwellinghouse

5. The Council has sought to rely on an Inspector's decision in an LDC case reference APP/M5450/X/15/3030439 (2015 decision) to conclude that planning permission is required for the proposal the subject of this appeal.
6. The Inspector in the 2015 decision stated at paragraph 7:

'The Order interpreted an 'original' building as being a building as it existed on 1 July 1948 or as it was first built if after that date. It is significant that the Order interpreted 'original' in terms of the built development and not in terms of any commencement of use or change of use.'

And at paragraph 14 the Inspector stated:

'Even if I give the benefit of the doubt to the appellant on the question of 'original dwellinghouse', the side extension element of the LDC proposal would still have been outside permitted development provisions. That is because it would have extended beyond a wall which fronts a highway (albeit at an angle) and forms a side elevation (which I also regard to be the principal elevation as it contains the doorway). It would therefore not have met limitations A.1(d).'

The matter of whether or not the building in question was an 'original dwellinghouse' therefore was not determinative in that case.

7. Part 1 of Schedule 2 to the GPDO is concerned with permitted development rights for 'Development within the curtilage of a dwellinghouse'. For the relevant parts of limitations and conditions dwellinghouse is used in a number of different ways. The term dwellinghouse is not defined in Schedule 2, or elsewhere in the GPDO. Article 2(1) of the GPDO does contain definitions applicable to the GPDO and these include:

- 'building' (a) Includes any structure or erection and except in certain specified Classes but not including Class A, includes any part of a building.
- 'dwellinghouse' – except in Part 3 of Schedule to the GPDO (changes of use), does not include a building containing one or more flats, or a flat contained within such a building. (this only serves to establish what is not to be regarded as a dwellinghouse and does not define what is a dwellinghouse).

In my view, the term 'original dwellinghouse' requires an application of the definition of 'original' in Article 2(1) in conjunction with the term 'dwellinghouse'. This is not the same as the concept of 'original building' which is the assessment that I believe the Council sought to address in concluding the application in the way it chose to.

8. Part 1 of Schedule 2 of the GPDO grants permitted development rights which triggered by the existence of a dwellinghouse. If the dwellinghouse the subject of the appeal did not exist as of 1 July 1948 then the 'original dwellinghouse' will be the dwellinghouse as and when it was built after that date. Permitted development rights only arise once a dwellinghouse has been brought into existence and where the dwellinghouse is in lawful existence.
9. Planning permission was granted for a first floor side to rear and single storey front extension and conversion to provide additional dwellinghouse in 2001 at

2 Howberry Road. The building regulations certificate of completion records a completion date of 14 October 2002. The ground floor of the new dwelling, according to the plans, was formed by converting an existing structure and building a single storey front extension, with first floor accommodation formed by the building of a first floor extension with pitched roof.

10. The dwellinghouse for which the permitted development rights are triggered is the one brought into existence following the 2001 planning permission being implemented. There is no substantiated evidence that the dwellinghouse completed in 2002 is not in lawful existence. In my view, the appeal property No 2 is an original dwellinghouse which came into existence in 2002 and which enjoys permitted development rights in principle under Part 1 of Schedule 2 of the GPDO.

Class B and C limitations and conditions

11. The Council considered that the proposal met all the limitations and conditions of Classes B (dormer) and C (rooflights) of Part 1 of Schedule 2 of the GPDO except the requirement (d) (ii) of Class B. That is that the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic meters. This was on the basis of the Council's view that the original dwellinghouse was not the dwellinghouse created in 2002.
12. In the light of my findings that the original dwellinghouse is that which came into existence in 2002 there has been no previous enlargement of the original roof space. The appellant on drawing no 2207.4 has set out the calculations for the cubic content of the resultant roof space as 49.96 cubic meters. The Council has not sought to challenge the mathematics of the calculations only in relation to whether or not a deduction could be made for the roof volume of the existing dwelling. As I have found that the existing dwelling to be the original dwellinghouse, that deduction is legitimate in calculating the resultant roof space. The resultant roof space would therefore not exceed the 50 cubic metres permitted under limitation (d) (ii) of Class B. The Council accepts that all other limitations and conditions are met in relation to Class B. I therefore find that the proposed dormer extension is permitted development under Class B of Part 1 of Schedule 2 of the GPDO.
13. The Council accept that the proposed three roof lights to the front elevation comply with the limitations and conditions of Class C of Part 1 of Schedule 2 of the GPDO. I therefore find that the proposed rooflights are permitted development under Class C of Part 1 of Schedule 2 of the GPDO.
14. 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 dormer extension to side and rear of main roof and rooflights to front 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.

Hilda Higenbottam

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 March 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:

No 2 is an original dwellinghouse which came into existence in 2002 and which enjoys permitted development rights in principle under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. This is shown on drawing number 2207.2.

The proposed dormer extension to side and rear of the main roof on drawing numbers 2207.3 Rev A and 2207.4 would comply with the conditions and limitations within Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. As such, the side and rear dormer extension is permitted development and lawful.

The proposed three rooflights to the front roof slope shown on drawing numbers 2207.3 Rev A and 2207.4 would comply with the conditions and limitations of Class C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. As such, they are permitted development and lawful.

Signed

Hilda Higenbottam

Inspector

Date 5 September 2022

Reference: APP/M5450/X/21/3280929

First Schedule

Dormer extension to side and rear of main roof. Rooflights to front

Second Schedule

Land at 2 Howberry Road, Edgware, London HA8 6SP.

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: 5 September 2022

by Mrs H M Higenbottam BA(Hons) MRTPI

Land at: 2 Howberry Road, Edgware, London HA8 6SP

Reference: APP/M5450/X/21/3280929

Scale: nts

