



Appeal Decision

Site visit made on 29 November 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/Z5630/X/22/3298279

9 Wyndham Road, Kingston Upon Thames KT2 5JR

- 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 G Kirschner against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 21/03309/CPU, dated 15 October 2021, was refused by notice dated 31 December 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 a loft conversion and hip to gable conversion following removal of the existing 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.

Main Issue

2. The main issue is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

3. Article 3(1) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) provides general planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions.
4. The LDC was refused by the Council on the basis that part of the dwellinghouse would, as a result of the works, extend beyond the plane of an existing roof slope forming the principal elevation of the dwellinghouse and fronting a highway (limitation B.1.(c)). The Council, however, has not been particularly demonstrative in shedding light on exactly what part of the dwellinghouse it is referring to – the decision notice and officer report are silent on this point, and the Council has provided neither an appeal statement nor comments upon the appellant's appeal statement.
5. Helpfully, however, the appellant has included with his own submissions an email chain of his agent's communications with the Council. The officer refers in her email of 6 January 2022 to "the part around the chimney".

6. I have considered the appeal proposal very carefully, including the submitted plans. I do not find that any part of the dwellinghouse would, as a result of the works, extend beyond the plane of an existing roof slope forming the principal elevation of the dwellinghouse and fronting a highway. The roof slope that the Council officer seems to be referring to in her email faces to the east (not fronting the highway) and forms part of the flank elevation of the dwellinghouse, not the principal elevation.
7. Accordingly, I find that the appeal development benefits from Class B permitted development rights, and that none of the associated limitations and conditions (that raised by the Council or any other) cause what is proposed to be unlawful.

Conclusion

8. 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 a loft conversion and hip to gable conversion following removal of the existing loft conversion 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.

Andrew Walker

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 15 October 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 benefits from general planning permission afforded by Article 3(1) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Andrew Walker

Inspector

Date: 12 December 2022

Reference: APP/Z5630/X/22/3298279

First Schedule

A loft conversion and hip to gable conversion following removal of the existing loft conversion

Second Schedule

Land at 9 Wyndham Road, Kingston Upon Thames KT2 5JR

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: 12 December 2022

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Scale: Do not scale

