



Appeal Decision

Site visit made on 30 November 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/G5180/X/21/3283102

10 Derwent Drive, Petts Wood, Orpington BR5 1EW

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Basant Mertia against the Council of the London Borough of Bromley.
 - The application, Ref DC/21/03564/PLUD, is dated 16 July 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: Proposed hip to gable loft conversion, loft dormer extension, floor plan redesign and all associated works.
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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 found to be lawful.

Application for Costs

2. An application for costs was made by Mr Basant Mertia against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the appellant name in the heading above from the application form as it appears to have been incorrectly spelt on the appeal form.
4. I have dealt with other appeals on this site. These are the subject of separate Decisions, Ref APP/G5180/W/21/3287713 and APP/G5180/D/21/3289055.
5. Planning Practice Guidance (PPG) is clear that planning merits are not relevant at any stage in the application or appeal process for an LDC application¹, and, that views expressed by third parties on the planning merits of the case are irrelevant when determining the application². So I have not taken any planning merits into account in this case. Planning merits include planning policies and the effect of the appeal development on the character and appearance of the area. My decision rests entirely on the facts involved in the case and the relevant planning law.

¹ Lawful development certificates, Paragraph 009 Reference ID: 17c-009-20140306

² Lawful development certificates, Paragraph 008 Reference ID: 17c-008-20140306

Main Issue

6. It is clear from the evidence that had the Council made a decision on the LDC application that its decision would have been to refuse. Therefore, the main issue is, if the Council had refused the application, whether their refusal would have been well-founded or not.

Reasons

7. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
8. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) grants planning permission for specified forms of development. Schedule 2, Part 1, Class B of the Order concerns the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. This is relevant for the proposed hip to gable and dormer extensions. Schedule 2, Part 1, Class C of the Order concerns any other alteration to the roof of a dwellinghouse, subject to conditions and limitations. This is relevant for roof lights which are proposed.
10. Based on the information provided, the single dispute between the Council and the appellant is whether the appeal development is exempt from Schedule 2, Part 1, Class B, Condition B.2.(b)(i)(aa) of the Order. In this regard, the Order states:

Development is permitted by Class B subject to the following conditions–

(b) the enlargement must be constructed so that–

(i) 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–

(aa) the eaves of the original roof are maintained or reinstated.

11. As I saw from an external inspection at my site visit, the appeal building has an existing extension at the rear which is joined to the appeal building's rear roof slope. As a result, the eaves of the original roof have been substantially removed.
12. The Council's objection to the appeal development, expressed in its statement, is that the eaves of the original roof have not been maintained or reinstated after previous works undertaken, referring to the rear extension, noted above, identified as relating to planning permission Ref 086/02504/FUL granted in October 1986.
13. It is clear from the application documents that a single act of development is proposed, and, it is clear from the description of development and the drawings provided that this is a case of a hip-to-gable enlargement.

14. Condition B.2.(b)(i)(aa) contains the phrase "*other than in the case of a hip-to-gable enlargement*", meaning that the appeal development is, in my view, unambiguously exempt from Condition B.2.(b)(i)(aa).
15. Even if this were not the case, the dormer extensions proposed are set up the roof slope from where the eaves were. A clear band of roof slope is seen on the drawings between the bottom of the dormers and the highest point where the existing rear extension joins the rear roof slope. So if the eaves were still seen on the building, they would be preserved by the dormers proposed.
16. It appears that the Council must have accepted the above, when it granted an LDC for what it describes as a 'similar' development, Ref DC/20/01841/PLUD, for the same property, on 21 July 2020. The Council now indicates that application should have been refused. Yet there is no evidence that LDC has been revoked and so it remains in force and, in accordance with section 191(6) of the 1990 Act, it shall be conclusively presumed.
17. My attention has been drawn to the Government's Technical Guidance³ and so I have had regard to this and it is an aid to interpretation and application of the Order. It states that it is sometimes necessary to remove the eaves of the original roof while works are carried out, and, that to be permitted development eaves that are temporarily removed should be reinstated. But such temporary removal is not relevant in this case as their removal occurred years ago.
18. In light of the above, and given that Condition B.2.(b)(i)(aa) is the single dispute between the main parties, I have no reason to consider that the appeal development is not lawful.
19. The Council has referred to legal advice it has sought. But no copy of the advice referred to has been provided for me to consider.
20. The Council takes the view that the aim of the section (which I take to mean Condition B.2.(b)(i)(aa)), is to permit development but not to permit 'unfettered extension after extension'. According to the Council, the wording is intended to allow a first extension, but by referring to the "eaves of the original roof" prevents a second extension, as those eaves obviously cannot be reinstated. But no authority has been provided for this argument, which I do not accept in any event as the property currently has no existing Class B extension.
21. Representations received allege that the drawings are inaccurate. But the Council has verified measurements on site and it has not raised any objection to the accuracy of measurements. I therefore have no reason to believe the Council's assessment is incorrect in this regard. Should a development be implemented that does not comply with the relevant measurements of the Order, it would be open to the Council to consider the expediency of planning enforcement action.
22. Other applications have been made on the site. But there is no limit to the number of different applications that an applicant may make, whether simultaneous or not, or to the number of permissions covering the same site.

³ Ministry of Housing Communities & Local Government, Permitted development rights for householders – Technical Guidance, September 2019

So other applications or permissions are not a basis for refusal of this application.

23. Representations received state that the proposal conflicts with other proposals for the property, such that they could not be carried out together. Be this as it may, it does not mean the development described in this application is not lawful. If a different development were implemented, that does not benefit from planning permission, it would be open to the Council to consider the expediency of planning enforcement action.
24. Moreover, if the implementation of one permission, in accordance with its terms and conditions, would make it physically impossible to implement another permission, in accordance with its terms and conditions, then it is likely the second permission could not be lawfully implemented in any event.
25. My attention has been drawn to a request for an Article 4 Direction to be made for the appeal property. But there is no evidence such a Direction already exists and so this is a matter for the Council, having regard to the relevant provisions of the Order.

Conclusion

26. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of: 'Proposed hip to gable loft conversion, loft dormer extension, floor plan redesign and all associated works', 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.

L Perkins

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 16 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 hip-to-gable and rear dormer roof extensions and roof lights, described on drawing numbers 99825 – 02 – 1100A, 1101A, 1200A, 1201A, 1300A, 3100A, 3101A, 3200A, 3201A, 3300A and 3500A comply with Schedule 2, Part 1, Class B and Class C respectively of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed:

L Perkins
INSPECTOR

Date: 24 January 2023

Reference: APP/G5180/X/21/3283102

First Schedule

Proposed hip to gable loft conversion, loft dormer extension, floor plan redesign and all associated works

Second Schedule

Land at 10 Derwent Drive, Petts Wood, Orpington BR5 1EW

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: 24 January 2023

By L Perkins BSc (Hons) DipTP MRTPI

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Reference: APP/G5180/X/21/3283102

Scale: Not to scale

