



Appeal Decision

Site visit made on 4 January 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/D1835/X/22/3299282

101 Bath Road, Worcester WR5 3AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Daniel Lynagh against the decision of Worcester City Council.
 - The application ref 21/01107/CLPU, dated 6 December 2021, was refused by notice dated 13 May 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is a roof extension.
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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 use which is considered to be lawful.

Applications for costs

2. An application for costs was made by Mr Daniel Lynagh against Worcester City Council. This is the subject of a separate decision.

Preliminary Matters

3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

5. This is whether the decision not to issue an LDC was well-founded. The decision turns on whether the proposal is permitted development under Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

6. No 101 is a 2 storey end of terrace period property. At the rear it has a 2 storey outrigger projection with a mono-pitched roof with a ridgeline which sits approximately level with the eaves of the rear roof slope on the main part of the house. The proposed roof extension would be constructed on the rear outrigger which, given the presence of other such outriggers along the terrace, is an original feature. To enable the roof extension, a small existing rear dormer window on the main rear roof slope would be relocated along the roof plane. The roof extension would adjoin the main roof slope of the dwellinghouse.
7. The council's view is that the proposed roof extension above the rear outrigger would extend beyond a greater portion of the existing rear-facing wall of the main part of the original dwellinghouse due to the outrigger having a lower roof line than the main roof of the house. This, it is considered, fails to comply with B.2(b)(ii) of Class B.
8. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains. Within Schedule 2, Part 1 of the GPDO, Class B grants permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to specified conditions and limitations set out in paragraphs B.1 to B.3. Paragraph B.2(b)(ii) of Class B states:

(b) the enlargement shall be constructed so that –

*(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;*
9. An interpretive provision at paragraph B.4. explains that for the purposes of paragraph B.2(b)(ii)—

(b) "rear or side extension" includes an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse.
10. The Department for Communities and Local Government's publication "*Permitted development rights for householders – Technical Guidance*"¹ provides 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 says: "*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*".
11. The *Technical Guidance* 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*

¹ September 2019

roof of a rear or side extension applies and so condition B.2(b)(ii) is not relevant to the proposal. I note that the council has referred to an appeal decision in support of their stance which considered that the outrigger was part of the original house and not therefore a rear or side extension. It also considered that the enlargement to the roof was not deemed to be development permitted by Class A of Part 1 of the GPDO. In the absence of the full details of the case, I am not able to make a direct comparison between the two appeals. Nevertheless, my judgement is based on the facts before me and my interpretation of the legislation.

Conclusion

12. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed roof extension to the outrigger 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.

S A Hanson

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 6 December 2021 the development 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 192 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

S A Hanson
INSPECTOR

Date: 2 February 2023

Reference: APP/D1835/X/22/3299282

First Schedule

Erection of a roof extension

Second Schedule

Land at: 101 Bath Road, Worcester WR5 3AE

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 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 2 February 2023

by S A Hanson BA(Hons) BTP MRTPI

Land at: 101 Bath Road, Worcester WR5 3AE

Reference: APP/D1835/X/22/3299282

Scale: Not to scale

