



Appeal Decision

Site visit made on 20 February 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2023

Appeal Ref: APP/M5450/X/21/3286659

12 Chestnut Drive, Pinner HA5 1LY

- 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 Piyush Mishra against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2714/21, dated 28 June 2021, was refused by notice dated 24 August 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 "loft conversion with rear dormer, hip to gable roof profile and front skylights."
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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.

Preliminary Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded.

Reasons

4. Subject to limitations and conditions, Class B of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, and Class C of Schedule 2, Part 1 of the

- GPDO permits other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the rear dormer, including hip to gable roof extension and front rooflight, would be granted permission by virtue of Class B and C.
5. The Council determined that the proposed rear dormer would be attached to a single storey rear extension which they state is an unlawful development, with no prior planning permission. In particular, the Council state that the height of the eaves of the rear extension, as built, exceeds the height of the eaves of the existing dwellinghouse and therefore fails to satisfy the criteria at Schedule 2, Part 1, Class A.1 (d) of the GPDO.
 6. The Government's Technical Guidance (TG)¹ whilst not determinative provides a useful guide to the interpretation of the GPDO. The TG provides guidance on how to measure the height of the eaves for both sloping and flat roofs. This states that *"For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height."*
 7. From my reading of the plans and my observations during my site visit, the eaves of the existing rear extension do not exceed the height of the eaves of the existing dwellinghouse. Therefore, the development does not fail to meet the limitation under Paragraph A.1 (d) of Schedule 2, Part 1, Class A of the GPDO.
 8. The Council also state that the proposed dormer fails to maintain or reinstate the eaves of the original roof and therefore the proposal fails to satisfy the criteria at Schedule 2, Part 1, Class B.2 (b)(i)(aa) of the GPDO. However, the plans illustrate that the eaves of the original roof would be maintained. Therefore, the development does not fail to meet the limitation under Paragraph B.2 (b)(i)(aa) of Schedule 2, Part 1, Class B of the GPDO.
 9. There is no dispute that the proposed development would adhere to all other limitations and conditions set out under Classes A, B and C of the GPDO, and I have found no reason to disagree with these findings. I therefore find no conflict against the relevant limitations and conditions of Article 3, Schedule 2, Part 1, Classes A, B and C of the GPDO.

Conclusion

10. 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 the "loft conversion with rear dormer, hip to gable roof profile and front skylights" 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.

R Satheesan

INSPECTOR

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019.



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 28 June 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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 is "permitted development" falling within Classes B and C 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

R Satheesan

INSPECTOR

Date :02 March 2023

Reference: APP/M5450/X/21/3286659

First Schedule

Loft conversion with rear dormer, hip to gable roof profile and front skylights.

Second Schedule

Land at 12 Chestnut Drive, Pinner HA5 1LY

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: 02 March 2023

by **R Satheesan BSc PGCert MSc MSc MRTPI**

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Not to scale.

