



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/J0405/X/22/3306017

17 Creslow Way, Stone, Aylesbury, Buckinghamshire HP17 8YN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended 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 Dr Yogesh Patel against Buckinghamshire Council - North Area (Aylesbury).
 - The application ref 22/01344/CPL is dated 12 April 2022.
 - 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 [sic] with dormer window roof extension with flat roof.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposal which is considered to be lawful.

Preliminary Matters

2. It has not been necessary to visit the site. This is because all the required information is included with the application and appeal documents, and a decision can be reached on the papers. Both parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. Neither objected.
3. The Council had not given notice to the appellant of its decision on the LDC application within the prescribed period. The appeal is therefore made under section 195(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority 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.
5. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision is 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

6. It is clear from the evidence provided within the Council's statement of case dated 8 November 2022 that had it made a decision on the application it would have issued an LDC. The Council took the view that the proposed loft

conversion with dormer window roof extension with flat roof would constitute permitted development and would be granted planning permission by Article 3 and Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'). However, since the Council has not issued a decision, the application is deemed to have been refused. Therefore, the main issue for this appeal is whether that deemed refusal would have been well-founded.

Reasons

7. The proposed development is described in the application form as a loft conversion with a dormer window roof extension with a flat roof. The application drawings show the proposed loft conversion facilitated by a dormer roof extension incorporating a hip to gable extension on either end of the main roof form. Schedule 2, Part 1, Class B of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. Class C of the GPDO permits other alterations to the roof of a dwellinghouse.
8. The property is an L shaped two storey detached dwelling with a half-hipped roof. The main section of the house on which the development is proposed, is orientated with its front facing west. The proposed roof works would involve making the main roof a hip-to-gable. A flat roof dormer would be installed across the width of the rear roof slope of the main roof and would be fully glazed. Glazing to each end would be non-opening and frosted and all new materials would match the existing house. The dormer would be stepped back from the eaves by a minimum of 0.2m measured along the roof slope from the edge of the enlargement to the outer edge of the eaves. It is also shown as being set in from the sides and set down from the ridge.
9. The measurements provided show that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres. The plans show that the glazing would be similar in style to the windows in the rear elevation of the existing house and the Juliet balcony would provide a safety bar and not a platform and therefore no external access.
10. On the evidence available to me I find, as a matter of fact and degree and on the balance of probabilities, the proposed loft conversion would be permitted by Class B and Class C, Part 1 of Schedule 2 of the GPDO and express planning permission would not be required.

Conclusion

11. Although the Council has indicated that it would have granted the LDC, since an appeal has been made against its failure to determine the application, it is deemed to have been refused. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the loft conversion with dormer window roof extension with flat roof 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.

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 12 April 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have constituted permitted development within the terms of Article 3 and Class B and Class C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 subject to compliance with the conditions set out in paragraphs B.2 and C.2.

Signed

S A Hanson

Inspector

Date: 31 May 2023

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First Schedule

Loft conversion with dormer window roof extension with flat roof

Second Schedule

Land at 17 Creslow Way, Stone, Aylesbury, Buckinghamshire HP17 8YN

IMPORTANT NOTES – SEE OVER

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: 31 May 2023

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Scale: Not to Scale

