



Appeal Decision

Site visit made on 3 April 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Appeal Ref: APP/M5450/X/22/3301565

26 Merivale Road, Harrow HA1 4BH

- 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 Desmond Fernandes against the decision of the Council of London Borough of Harrow.
 - The application ref P/0523/22, dated 17 February 2022, was refused by notice dated 13 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 the construction of a rear dormer and 2 velux windows.
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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.

Applications for costs

2. An application for costs was made by Mr Desmond Fernandes against the Council of the London Borough of Harrow. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposed development set out on the Council's decision notice differs to that provided on the application form, and a different form of words is provided by the appellant on the appeal form. I have therefore adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought, and thus it forms the basis of my determination. That said, in the interests of clarity, I have made a minor correction to this description to include the words 'of a'.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposed operations would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. In order for a LDC to be granted under section 192 of the Town and Country Planning Act 1990 (the 1990 Act), it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use or operations

described would have been lawful at the time of application, that being 17 February 2022. Planning merits form no part of the assessment for an application for a LDC, which is instead considered on the facts of the case and any relevant judicial authority.

6. The appeal property is a mid-terrace two storey dwellinghouse with a two storey flat roofed outrigger to its rear. The proposed development consists of a dormer roof extension, extending out from the rear facing roof slope and over the roof of the outrigger, and the installation of two 'velux' roof lights to the front facing roof slope.
7. Schedule 2, Part 1, Class B of the GPDO states that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. Other alterations to the roof of a dwellinghouse are permitted by Class C of the same Part. These permitted development rights are subject to various limitations and conditions. There appears to be no dispute between the parties that the proposed development would comply with the physical limitations and conditions set out in paragraphs B.1 and B.2 of Class B, and paragraphs C.1 and C.2 of Class C.
8. Nevertheless, the Council considers that the proposed rear dormer would not be wholly contained within the roof slope of the dwellinghouse and effectively creates a second storey extension that will sit above the outrigger. As a result, the Council is of the view that the proposal should be assessed against the limitations and conditions set out in Class A – for the enlargement, improvement or other alteration of a dwellinghouse. Having done so, it considers that the proposal fails to meet the limitations set out at paragraphs A.1 (i) and A.1(k)(iv), and on that basis the proposal would not be permitted development.
9. However, there is nothing within the limitations or conditions set out in Class B to suggest that an enlargement cannot extend over the flat roof of an existing rear outrigger or that such an enlargement must be wholly contained within a roof slope, opposed to that of a flat roof. Furthermore, paragraph A.1(k)(iv) states that development is not permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse. Therefore, the application of the limitations and conditions set out in Class A are irrelevant to the proposed development, which amounts to an addition and alteration to the roof of a dwellinghouse.
10. In this case, non-compliance with paragraph A.1(k)(iv) of Class A does not prevent the proposal from being permitted development, it merely means that the Class A provisions do not apply to this type of development. Therefore, given the type of development proposed, it is clear to me that the proposal should be assessed under the criteria set out in Classes B and C of Schedule 2, Part 1 of the GPDO.
11. The Council are concerned that the flat roof form of the outrigger does not protrude above the eaves of the dwellinghouse's main roof and suggests that it is not interconnected with the main roof of the building. It also suggests that because the flat roof of the outrigger terminates roughly level with the eaves of the main dwelling, it cannot be considered to form part of the roof of the main building. However, it is unclear how this has any bearing on the case, and the fact remains that I have not been referred to any specific criteria within Classes B or C that the proposal would not satisfy.

12. I note the presence of several similar forms of development along the street, including a loft conversion at the neighbouring property at No.24 which benefits from a LDC¹. In granting this LDC the Council concede that this proposed development was not assessed against the criteria set out in Schedule 2, Part 1, Class A of the GPDO, and now suggest that this neighbouring development would also be unlawful for similar reasons along with other similar extensions along the road that it may have erroneously deemed as lawful. Nevertheless, these other examples are not determinative and therefore the proposal before me is considered on the facts of the case and its compliance or otherwise with the provisions of the GPDO.
13. Consequently, bringing all these points together, the appellant has demonstrated, on the balance of probabilities, that the proposed operations would have been permitted development having regard to the relevant provisions of the GPDO.

Conclusion

14. 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 construction of a rear dormer and 2 velux windows 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.

J M Tweddle

INSPECTOR

¹ Ref. P/0582/14

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 17 February 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 operations would have been permitted 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).

Signed

J M Tweddle

Inspector

Date: 01 June 2023

Reference: APP/M5450/X/22/3301565

First Schedule

Construction of a rear dormer and 2 velux windows as depicted on plans and drawings: A3/03765-02; A3/03765-03; A3/03765-04; A3/03765-05; A3/03765-06; A3/03765-07; A3/03765-08.

Second Schedule

Land at 26 Merivale Road, Harrow HA1 4BH

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 01 June 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

Land at: 26 Merivale Road, Harrow HA1 4BH

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Scale: Not to Scale

