



Appeal Decision

Site visit made on 27 June 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH JULY 2023

Appeal Ref: APP/K3605/X/22/3293217

44 Havers Avenue, Hersham, Walton-On-Thames KT12 4ND

- 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 Jacob against the decision of Elmbridge Borough Council.
 - The application ref 2021/3996, dated 19 November 2021, was refused by notice dated 18 February 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 development is sought is a hip to gable loft extension and dormer extension, after amendments to non-original crown roof over existing side extension.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The Lawful Development Certificate (LDC) seeks to establish whether the works would have been lawful on the date of the application. Planning merits of the development are of no relevance. The plans supplied with the application show a hipped roof to a gable roof extension, with a flat roofed rear dormer and rooflights to the front roof plane. They also show a separate crown roof on the two-storey side extension, which would align with a roof approved with a separate planning permission granted in 2021¹.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the loft conversion was lawful on the date of the application, considering whether the proposal amounts to development works that are permitted by Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. ('the Order').

Reasons

4. The existing dwelling comprises a semi-detached house finished in reddish/brown brick with a two-storey side extension and a hipped roof.
5. The appellant's case is that the works are compliant with Class B, and do not need to be considered under Class A subject to the hip to gable being formed after amendments to the two-storey extension roof being carried out in

¹ Council reference 2021/2949

accordance with the 2021 permission. I have had regard to the appellant's position, but an LDC is establishing whether the works would have been lawful on the date of the application. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority. The onus is on the applicant to provide all the relevant information and evidence to support their case.

6. With the benefit of a site visit it was noted that the works to form a crown roof on the extension in accordance with the 2021 permission had not been carried out. The proposed works could not therefore have been carried out as shown on the submitted plans as they would have to be attached to the roof of the existing side extension. The hip to gable works would not protrude past the original side of the dwelling. However, as the current roof joins the roof of the existing two storey extension, the works would therefore include an alteration to the extension roof and would have to be considered under Class A.
7. Paragraph (ja) of Class A of the Order sets out that any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) must not exceed the limits set out in paragraphs (e) to (j). The proposed works would contravene paragraphs A.1 (i) and (j) of Class A of the Order, as the new roof to the existing extension would be closer than 2 metres to the boundary of the curtilage and would have an eaves height that exceed 3 metres. Also, a side extension must not have more than a single storey or exceed 4 metres in height.
8. Consequently, for the purposes of the Order, I am of the view that the proposal needs to be considered under Class A of the Order and it contravenes paragraphs A.1 (i) and A.1 (j). On the balance of probability, it has not been demonstrated that at the time of the application, the development would have been permitted by Class A of the Order.

Other Matters

9. I understand that the appellant feels frustrated by the proposal being considered differently to what was expected, in light of advice they received. However, the conduct of the Council and any previous discussions or decisions on alternative applications is not a matter that affects my findings on the main issue in this case.
10. As indicated in the preliminary matters, the planning merits of any operations are not relevant in this LDC. Consequently, whether or not the development is harmful to the street scene, or it is similar to how neighbouring properties have been extended is not a determinative factor in deciding if it is permitted.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of the hip to gable loft extension and dormer was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M. P. Howell

INSPECTOR