



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/22/3292560

17 Spicer Close, Walton-On-Thames KT12 2YA

- 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 and Mrs Brient against the decision of Elmbridge Borough Council.
 - The application ref 2021/3370, dated 10 September 2021, was refused by notice dated 3 February 2022.
 - The application was made under section 191(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 loft conversion with small hip to gable extension and rear dormer extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Lawful Development Certificate (LDC) seeks to establish whether the works would have been lawful on the date of the application. In an application for a LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority. Planning merits of the development are of no relevance in this instance.
3. Notwithstanding what has been carried out on site, the plans supplied with the application show the extension of the roof from a small, hipped roof to a gable roof extension, with a flat roofed rear dormer and rooflights to the front roof plane. The Council has assessed the development on that basis and so shall I.

Main Issue

4. 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, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. ('the Order').

Reasons

5. The appeal site comprises a two-storey dwelling finished in red brick on a residential estate of similar properties. The property has been extended in the past with a single storey side and rear extension.

6. Class B of Schedule 2, Part 1 of the Order 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 Order permits other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the loft conversion and rooflights would have been permitted by virtue of Classes B and C.
7. There is no dispute between the parties over the small hip to gable extension or front rooflights being compliant with the Class B and C of the Order. The contention is with respect to the height of the rear dormer. The Council determined that the development is not permitted, as a rooflight that forms part of the flat roof of the dormer exceeds the highest height of the existing roof.
8. The appellant accepts that the rooflight exceeds the highest part of the existing roof but indicates that the main form of the dormer roof sits below the ridgeline. Also, the rooflight is sequential in its appearance, hardly visible from the street scene and does not impact on neighbours. Furthermore, the appellant considers that the rooflight should be determined in the same manner as a rooflight protruding from the original roof plane under Class C of the Order.
9. Paragraph B.1.(b), states 'any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof' (my emphasis). As such, whether most of the roof is below the existing roof height is not pertinent when establishing whether the development is permitted. I accept that most of the dormer roof does not exceed the ridgeline, however, as the rooflight does exceed the height of the existing roof and forms part of the flat roof, it should be considered as part of the dormer and dwellinghouse. Consequently, the development is not permitted by Class B of the Order when the rooflight exceeds the height of the highest part of the existing roof.
10. Class C of the Order does allow for rooflights to protrude 0.15 above roof planes that do not form part of the principal elevation. Nevertheless, this permitted right is with respect to the original roof rather than a roof that forms part of an extension to the property. As the dormer does not form part of the original roof, the rooflight would not be compliant with this requirement. As indicated in the preliminary matters, the planning merits of any operations are not relevant in this LDC. Consequently, whether or not the rooflight is visible, harmful to the street scene or neighbours living conditions is not a determinative factor in deciding if it is permitted.
11. Accordingly, 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 B or C of the Order.

Conclusion

12. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful development in respect of a loft conversion with small hip to gable extension and rear dormer extension 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