



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/T5150/X/22/3304574

7 Aston Avenue, Harrow, Brent HA3 0DB

- 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 & Mrs Shah against the decision of the Council of the London Borough of Brent.
 - The application ref 22/1743, dated 12 May 2022, was refused by notice dated 8 July 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 *Wrap-around side to rear dormer window with two Juliet balconies and removal of two chimney stacks to dwellinghouse.*
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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 description in the banner heading above and in the certificate is taken from the Council's decision notice and the appellants' appeal form, since that given in the original application form included superfluous wording.
3. Whilst under s.192 there is no implied power to modify the description of the proposed development, the appellants confirmed that they agree to the amended description.
4. The main parties views were sought regarding condition B.2.(c) of Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) which states that any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
5. In response the appellants submitted revised plans which indicate the windows to be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
6. The plans do not present details which materially alter the proposal but provide confirmation that condition B.2.(c) of Class B would be complied with. Consequently, the Council are not prejudiced by accepting the plans and they in any case confirmed them to be suitable.

7. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellants and the appropriate test of the evidence is the balance of probabilities.
8. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.
9. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.

Main Issue

10. Whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

11. The appeal property is a detached two-storey house. The application sought to demonstrate that a wrap around side to rear dormer window with two Juliet balconies and the removal of two chimney stacks constitutes permitted development.
12. 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, including that development is not permitted if any part of the dwellinghouse would, as a result of the works, extend beyond the *plane* [my emphasis] of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway (B.1.(c)).
13. There is no suggestion that the proposed development would not accord with the criteria set out in Class C of the GPDO and I have no reason to take a different view. The matter in dispute is whether the proposed dormer extends beyond the plane of the existing front roof slope which forms the principal elevation of the dwellinghouse and fronts the highway.
14. The plane of a roof is essentially a notional two-dimensional form which runs parallel with and at the same level as the roof slope and it is at the same height and slope as that surface, but the plane also continues beyond that surface.
15. Consequently, the proposed dormer does not have to be erected on a roof slope which forms the principal elevation of the dwellinghouse and fronts a highway to fail the B.1.(c) limitation, it only must extend beyond (be in front) of the plane of such a roof slope.
16. In this case the proposed dormer would be erected within and above the side and rear roof slopes. Given its siting and height below the ridge, it would not extend beyond (be in front of) the plane of the front roof slope.

17. Having regard to the above, I find the proposed development would constitute permitted development by virtue of Schedule 2 Part 1 Class B of the GPDO.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal 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.

Felicity Thompson

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 May 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) Schedule 2 Part 1 Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) since the development falls within Part 1 Classes B and C of the GPDO.

Signed

Felicity Thompson

Inspector

Date: 21 July 2023

Reference: APP/T5150/X/22/3304574

First Schedule

Wrap-around side to rear dormer window with two Juliet balconies and removal of two chimney stacks to dwellinghouse, as shown on drawings numbered PL-DR-PR2-00-11, PL-DR-PR2-00-12, PL-DR-PR2-00-13, PL-DR-PR2-00-14, PL-DR-PR2-XX-60, PL-DR-PR2-XX-61 received by The Planning Inspectorate on 13 July 2023.

Second Schedule

Land at 7 Aston Avenue, Harrow, Brent HA3 0DB

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: 21 July 2023

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Land at: 7 Aston Avenue, Harrow, Brent HA3 0DB

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Scale: Not to Scale



0.0 Existing Block Plan
① (Scale 1/500)
1:500

