



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/G5180/X/22/3313011

34 Heath Side, Petts Wood, Bromley, Orpington BR5 1EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Neale Coules-Miller against the decision of the Council of the London Borough of Bromley (the LPA).
 - The application Ref DC/22/03987/PLUD, dated 10 October 2022, was refused by notice dated 6 December 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 conversion of existing loft into habitable space incorporating hip to gable side wall extension rear Dormer / front slope Velux lights and Porch.
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Decision

1. The appeal is dismissed insofar as it relates to the conversion of existing loft into habitable space incorporating hip to gable side wall extension, rear dormer and front slope Velux lights.
2. The appeal is allowed insofar as it relates to the porch and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Main Issue

3. In their appeal statement, the appellant states that the main issues for consideration in this appeal include whether the proposed extension gives rise to any demonstrable harm to the character of the area. However, for clarity, S195(2) and (3) of the Act confine the Secretary of State's remit in determining appeals against refusals of LDC applications solely to whether or not the LPA's decision was well-founded. Matters of planning merit are not relevant to appeals against LDC applications.
4. The main issue therefore is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

5. S191(2) of the Act states that operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2 of the Order.
7. Class B of Part 1 of Schedule 2 describes the enlargement of a dwellinghouse consisting of an addition or alteration to its roof as permitted development. Permitted development under Class B is subject to the limitations set out paragraph B.1 which sets out that development is not permitted development if any of the limitations are met. Development is not permitted under Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40m³ in the case of a terrace house, or (ii) 50m³ in any other case.
8. The main dispute between the parties here is whether the proposed hip-to-gable and dormer extensions to the roof of the property would exceed the 50m³ cubic content limitation.
9. The appellant states that the hip-to-gable extension would measure 7.2m in width, 3m in height and 4.2m in depth, giving a cubic content of 15.1m³. In addition, the appellant states the dormer extension would measure 6.6m in width, 3m in height and 3.5m in depth, with a cubic content of 34.7m³. In total, the cubic content of the additions would be 49.8m³ according to the appellant.
10. The submitted plans show the dormer extension would, more accurately, measure 6.6m in width, 2.967m in height and 3.516m in depth, giving 34.42m³ based on the appellant's calculation approach.
11. The plans do not, however, show full measurements for the hip-to-gable extension. A measurement is shown as 7.271m. However, as the LPA point out, that measurement is depicted on the party wall with the adjoining property. No measurement of depth is given for the flank wall which will be extended as a result of the proposal. The LPA indicate its measurement from the scaled plans of the width of the hip-to-gable extension is 7.56m not 7.271m. The appellant does not dispute that measurement in their appeal submissions.
12. Moreover, the appellant indicates that the height of the hip-to-gable extension would be 3m. However, the height of the dormer is just short of 3m at 2.967m and the plans show the dormer would be set back from the eaves and the ridge. Furthermore, the LPA indicates that its measurement from the plans is that the height of the hip-to-gable extension is 3.5m. The LPA say the depth is actually lower than the 4.2m suggested by the appellant at 4.05m. Again, however, the appellant has not disputed the LPA's measurements in their appeal submissions. Thus, taking the LPA's figures would give a cubic content of the hip-to-gable of 17.8605m³, using the appellant's method of calculation. Consequently, the combined cubic content of the roof alterations would amount to 52.5105m³ according to the LPA.
13. As a result, since the plans do not annotate the measurements of the hip-to-gable extension and as the appellant has not disputed the LPA's measurements, I find on the balance of probabilities that it has not been demonstrated that the combined cubic content of the proposed dormer extension and hip-to-gable extension would not exceed the 50m³ limitation under paragraph B.1(d)(ii) of Class B of Part 1.

14. Therefore, the proposed dormer and hip-to-gable extension would not be permitted development under Class B of Part 1 of Schedule 2 and would not be granted planning permission by Article 3(1) of the GPDO. As a consequence, at the date the LDC application was made, the proposed dormer and hip-to-gable extension would not have been lawful.
15. Turning to the proposed front rooflights, the LPA does not dispute that they would be permitted development under Class C of Part 1 of Schedule 2 of the GPDO. Class C says that any other alteration to the roof of a dwellinghouse is permitted development. The windows would not protrude more than 0.15m beyond the plane of the slope of the original roof nor would they meet any of the other limitations under paragraph C.1.
16. However, the rooflights are designed to serve the converted loft space and would be dependent in their positioning on the hip-to-gable extension of the roof. They are not therefore separable building operations and are part and parcel of the proposed roof alterations to facilitate the loft conversion. As a result, the proposed front rooflights would not have been granted planning permission by Article 3(1) of the GPDO and therefore would not have been lawful at the date the LDC application was made.
17. The LPA does not dispute that the proposed porch would have been lawful. Class D of Part 1 of Schedule 2 of the GPDO states the erection or construction of a porch outside any external door of a dwellinghouse is permitted development. The proposed porch would not exceed 3m³ in external ground area, would not be more than 3m above ground level and would not be within 2m of any boundary of the curtilage of the dwellinghouse with a highway. As such, the proposed porch would have been granted planning permission by Article 3(1) of the GPDO. There is no evidence the porch would have contravened any requirements of any enforcement notice then in form. Therefore, the porch would have been lawful at the date the LDC application was made.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of existing loft into habitable space incorporating hip to gable side wall extension rear Dormer and front slope Velux lights 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.
19. 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 porch 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 Whitfield

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 10 October 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 proposed porch would have been granted planning permission by Article 3(1) of the GPDO. As a result, no enforcement action may have been taken in respect of the porch and it does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: 10 August 2023
Reference: APP/G5180/X/22/3313011

First Schedule

Erection of a porch.

Second Schedule

Land at 34 Heath Side, Petts Wood, Bromley, Orpington BR5 1EY

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: 10 August 2023

by **J Whitfield BA (Hons) DipTP MRTPI**

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Scale: NTS

