



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/V4630/X/22/3309723

20 St Marks Road, Brownhills, WALSALL, WS8 7AQ

- 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 Francis O'Regan against the decision of Walsall Metropolitan Borough Council.
 - The application ref 22/1016, dated 11 July 2022, was refused by notice dated 10 October 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 formation of habitable rooms in roof space with rear dormer and front Velux rooflights.
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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. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the documentary evidence submitted.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merits.

Reasons

4. The appeal relates to a two-storey semi-detached property. The appellant contends that the proposed development would be permitted development (PD) by virtue of the provisions of Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
5. Class B provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted subject to conditions.

Condition B.2. (b) (ii) states: - other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.

6. Planning permission was granted in 2013 for a "proposed conversion and extension to existing garage" (Ref: 13/0006/FL) (the 2013 permission). The principal point at issue is the Council's determination that the proposed development would not comply with paragraph B.2.(b)(ii) of the GPDO because it would be joined onto the previously extended roof ridge and first floor extension (the 2013 permission) and thus would extend beyond the outside face of the south side facing external wall of the original dwellinghouse.
7. The 2013 permission was carried out and completed as one discreet operation. The appeal proposal would be another discreet operation. Thus, these two elements would not be one development. Consequently, having regard to the submitted drawings, the proposed development would not extend beyond the outside face of any external wall of the original dwellinghouse and would therefore be permitted development for the purposes of Part 2, Class B of the GPDO. Thus, the proposed development would be lawful.

Conclusion

8. 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 formation of habitable rooms in roof space with rear dormer and front Velux rooflights 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.

Elizabeth Jones

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 11 July 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 formation of habitable rooms in the roof space with rear dormer and front Velux rooflights. As shown on the application plan dated 9 September 2022 and referred to as 'proposed Plans and Elevations 12-07-22' is permitted development falling within Class B of Part 2 Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3 (1) of the Order.

Signed

Elizabeth Jones

Inspector

Date: 27 October 2023

Reference: APP/V4630/X/22/3309723

First Schedule

Formation of habitable rooms in the roof space with rear dormer and front Velux rooflights.

Second Schedule

Land at 20 St Marks Road, Brownhills, WALSALL, WS8 7AQ

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: 27 October 2023

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Scale: Not to Scale

