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# Appeal Decision

Site visit made on 11 October 2023

**by J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> November 2023**

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**Appeal Ref: APP/T2350/X/23/3316392**

**77 Mitton Road, Whalley, Clitheroe, Lancashire, BB7 9JN**

- 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 Mrs Verity Evans against the decision of Ribble Valley Borough Council.
  - The application ref 3/2022/0451, dated 26 May 2022, was refused by notice dated 29 July 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 use or development is sought is a rear dormer construction.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the site address from the appeal form as this appears to be a more accurate reflection of the site's location.
3. The Local Planning Authority's (LPA) description of the development for which a LDC is sought, as set out in its decision notice, differs to that provided on the application form and a different form of words is provided by the appellant on the appeal form. I have therefore adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought, and thus it forms the basis of my determination.

## Main Issue

4. The main issue is whether the LPA's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the dormer extension is permitted development, having regard to the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the GPDO).

## Reasons

5. Section 191(4) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

6. Uses and operations are lawful at any time if no enforcement action may 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. In addition, the development must not constitute a contravention of any enforcement notice then in force.
7. I have not been informed that there was an extant enforcement notice relating to the development at the time of application. Instead, the appellant's case is made on the basis that the operations amount to permitted development that do not require an express grant of planning permission.
8. My decision is therefore based on the facts of the case and any relevant judicial authority. For the avoidance of doubt, this means that any planning merits are not relevant to this appeal. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development would have been lawful on the date on which the application was made, that being 26 May 2022. Consequently, the main consideration is whether or not the LPA's decision was well-founded, a decision I will make on the balance of probabilities, taking account, but ultimately irrespective of the reasons given by the LPA for its decision.
9. The appeal property is a semi-detached two storey dwelling at 77 Mitton Road, Whalley. The development subject to this LDC appeal is the construction of a dormer roof extension on the rear roof slope of the property. It has been clad with dark grey composite vertical boards and comprises two large rectangular shaped double glazed windows with dark grey uPVC frames.
10. Schedule 2, Part 1, Class B of the GPDO states that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development, subject to various limitations and conditions. Paragraph B.2 (a) states that development is permitted on condition that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
11. The accompanying technical guidance<sup>1</sup> states that *"this condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration"*.
12. The guidance goes on to advise that *"window frames should also be similar to those in the existing house in terms of their colour and overall shape"*. In this case, the use of dark grey coloured uPVC framed windows in the dormer roof extension is not consistent with the white uPVC framed windows of the existing dwelling. Therefore, the external materials used in the dormer extension are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Nevertheless, I am satisfied that the overall shape of the windows, despite being slightly larger and elongated, are similar to the rectangular shape of the existing windows found within the remainder of the dwelling. Window size has not been a determinative factor in my assessment.

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<sup>1</sup> Permitted development rights for householders: Technical guidance, page 35, published by the Ministry of Housing, Communities and Local Government, September 2019

13. Consequently, the development does not satisfy the condition set out at Paragraph B.2 (a) of Schedule 2, Part 1, Class B of the GPDO, and, on that basis, it is not permitted development.

### **Other Matters**

14. I note that the LPA has previously issued a LDC<sup>2</sup> for a proposed dormer roof extension at the appeal property that included the use of grey uPVC window frames. In light of the technical guidance, it is difficult to see how the Council reached that determination. Nevertheless, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that a development is lawful, regardless of how the LPA may have determined other cases.
15. I have also been referred to an appeal decision in which I am advised that the Inspector found that, by virtue of the significant disparity in the size and shape of the windows to be installed in a rear dormer compared to the windows of the existing property, condition B.2(a) would not be complied with. However, I do not have the full details of this other case before me and, therefore, it does not lead me away from my findings on the main issue in this appeal.

### **Conclusion**

16. The appellant has not demonstrated, on the balance of probabilities, that the dormer extension is permitted development, having regard to the relevant provisions of the GPDO. Therefore, in the absence of an express grant of planning permission, it has not been demonstrated that the proposed development would be lawful.
17. For the reasons given above, I conclude that the LPA's refusal to grant a certificate of lawful use or development in respect of a rear dormer construction 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.

*J M Tweddle*

INSPECTOR

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<sup>2</sup> LPA Ref. 3/2019/0572