



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2023

Appeal Ref: APP/B1930/X/23/3318545

33 Charmouth Road, St Albans, Hertfordshire AL1 4SE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Savvas Fellas against the decision of St Albans City Council.
 - The application ref 5/22/2538, dated 2 November 2022, was refused by notice dated 22 December 2022. The application was made under section 192(1)(b) of the Act.
 - The development for which an LDC is sought is 'hip to gable loft conversion with rear dormer window, proposed rooflights, extended dropped kerb, replacement driveway and external works'.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Procedural matter

2. The description of the proposed development for which an LDC is sought is taken from the Council's refusal notice. It is an accurate description of the proposed development.

Reasons

3. 33 Charmouth Road is a two-storey semi-detached dwelling with a hipped roof. The Council has no concerns with any element of the proposed development other than the 'hip to gable loft conversion with rear dormer window'; other elements are all individual developments that are permitted under the provisions of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the 2015 GPDO). The Council refused the application because they maintain that the 'hip to gable loft conversion with rear dormer window' does not comply with condition (d)(ii) of Class B of Part 1 of Schedule 2 of the 2015 GPDO and is not therefore permitted development.
4. Class B states that the enlargement of a dwellinghouse by an addition to its roof is permitted development. Condition (d)(ii) of this permitted development right requires the cubic content of the resulting roof space of a semi-detached dwelling not to exceed the cubic content of the original roof space by more than 50 cubic metres. The Council maintains that the additional volume would be 53.24 cubic metres. The Appellant maintains that it would be 49.8 cubic metres. The dwelling has a two-storey rear extension and both parties have, rightly, included the roof over this extension in their calculations of the increase in roof volume.
5. Paragraph B.4 of the 2015 GPDO states that "...roof tiles, guttering, fascias, barge boards, and other minor roof details overhanging the external wall of the

original dwellinghouse are not to be considered part of the enlargement". The Council has stated that "The volume was calculated to not include any roof tiles, guttering, fascias, barge boards or other minor roof details which overhang the outer face of the wall". With regard to the roof over the two storey extension, the Council has stated that "...the eaves of said extension, which overhang, are not considered to be minor features, and have therefore been included in the calculations conducted by the Council".

6. It would appear that the Council has, confusingly, included the eaves overhang of the roof over the extension in their calculations but have excluded the eaves overhang of the roof over the original dwelling. The rear extension matches the original dwelling in design and form and both elements have extended eaves that overhang external walls. Some dwellings have no roof overhangs whilst some, like the appeal dwelling, have roof overhangs. This is why roof overhangs must be regarded to be minor roof details because to do otherwise would penalise owners of dwellings with roof overhangs when assessing whether additions to the roofs of those dwellings would be permitted developments.

7. A calculation of the increase in cubic content of the original roof space of 33 Charmouth Road must take account of three elements, the roof over the rear extension, the hip to gable extension and the rear dormer; the extended eaves of the first two elements being excluded in the calculation. This is what has been done by the Appellant. He has provided detailed sums and diagrams in explanation of the calculation, and it is worth noting that the Council has not provided precise details of how they reached their conclusion on the increase in cubic content. There is no reason not to accept the conclusion reached by the Appellant that the increase in the cubic content of the original roof space would be 49.8 cubic metres.

8. The resulting roof space of the semi-detached dwelling would not exceed the cubic content of the original roof space of the dwelling by more than 50 cubic metres. The proposed development would satisfy condition (d)(ii) of Class B of Part 1 of Schedule 2 of the 2015 GPDO and the proposed development as a whole is therefore permitted development. The two Appeal Decisions referred to by the Appellant have no bearing on this conclusion.

9. For the reasons given the Council's refusal to grant an LDC for 'hip to gable loft conversion with rear dormer window, proposed rooflights, extended dropped kerb, replacement driveway and external works' at 33 Charmouth Road, St Albans was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 2 November 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 operations are development permitted under Class B of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

John Braithwaite

Inspector

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First Schedule

Hip to gable loft conversion with rear dormer window, proposed rooflights, extended dropped kerb, replacement driveway and external works

Second Schedule

Land at 33 Charmouth Road, St Albans, Hertfordshire AL1 4SE

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: 04 December 2023

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Scale: Not to Scale

