



Appeal Decision

Site visit made on 24 November 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal Ref: APP/Z4310/X/23/3327363

142 Alder Road, Liverpool L12 9ES

- 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 Carl Higgins against the decision of Liverpool City Council.
 - The application ref 22LE/3038, dated 8 November 2022, was refused by notice dated 9 February 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a lawful development certificate is sought is a hip to gable extension, dormer extension at rear and 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 operations existing on the application date which are considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse a LDC was well-founded. This will turn on whether the development would constitute permitted development by virtue of the provisions of Article 3(1) and Classes B and C Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').

Reasons

3. An application under S191(1)(b) of the Town and Country Planning Act 1990 (as amended) (the 'Act') seeks to establish whether any operations which have been carried out in, on, over or under land are lawful. S191(4) sets out that if, on an application under this 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 local planning authority or a description substituted by them, they shall issue a certificate to that effect.
4. The matters in dispute relate to the consistency of the submitted plans against the situation on the ground and the development subject of this appeal insofar as the use of materials for the exterior work and whether a window, inserted in the side elevation of the dwelling, is obscure glazed and non-opening.
5. The key, despite the situation on the ground, is whether the operations were lawful on the date on the application. The onus of proof lies firmly with the appellant, though the relevant test of the evidence is the balance of probabilities. The appellant says that the works had begun or the building works were substantially completed on 1 November 2022 which was prior to the submission of the LDC. My assessment has been made on that basis.

6. The submitted plan shows the use of render to the elevations and a tile roof. To satisfy paragraph B.2(a), Class B of the GPDO, 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. The hip to gable extension and the west elevation of the dormer window are shown to be finished in render. These parts of the scheme would have a similar appearance to the exterior of the existing dwelling. According to the submitted plan, the east facing cheek of the dormer window was built with concrete hung tiles to match the existing roof's colour. The same material is shown for the south elevation (rear). Concrete hung tiles for these parts of the dormer window would have had a similar appearance to the existing dwelling.
7. An aerial image of the appeal property shows that the dormer has been rendered on the south and east elevations. I do not know the date when that image was taken or when the photograph of the property's front and side elevation showing a mixture of render and brickwork for the property's elevations was taken. These do bring into question the accuracy of the submitted plan and my assessment of that against Class B of the GPDO. However, in the absence of dates associated with the photograph and aerial image, there is no contradictory evidence to the appellant's submitted plan and the materials precisely detailed on that plan. It may be that events on the ground changed after the LDC was submitted, but my assessment is based on when that application was submitted. It is therefore a view taken in a snapshot in time against the GPDO not against subsequent events on the ground.
8. The submitted plan does not show a window in the new gable elevation serving the loft space. While one has been inserted in the property, I do not know whether this window was present when the LDC was submitted. Taking the submitted plan on face value, there would not have been any conflict with paragraph B.2(c) of the GPDO.
9. In terms of an assessment against Part 1, Class B of Schedule 2 of the GPDO, I have no reason to doubt the Council's analysis of the operations subject of this appeal against this part of the GPDO. Furthermore, the roof light to the front roof plane accords with Part 1, Class C of Schedule 2 of the GPDO.
10. So, for the reasons set out above, I conclude that the appellant has shown, on the balance of probability, that the hip to gable extension, dormer extension at rear and rooflights were permitted development on the date of the LDC application having regard to the GPDO.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of hip to gable extension, dormer extension at rear and 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.

Andrew McGlone

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE: APP/Z4310/X/23/3327363

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 8 November 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations would constitute permitted development within the terms of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

Andrew McGlone

Inspector

Date: [6th December 2023]

First Schedule

Hip to gable extension, dormer extension at rear and rooflights in accordance with the following plan: Kel_001 and Kel_004-A1.

Second Schedule

Land at 142 Alder Road, Liverpool L12 9ES

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: [6th December 2023]

by Andrew McGlone BSc MCD MRTPI

Land at: 142 Alder Road, Liverpool L12 9ES

Reference: APP/Z4310/X/23/3327363

Scale: Not to Scale

