



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/J0350/X/23/3321780

64 Upton Court Road, Slough SL3 7LZ

- 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 Barjinder Grewal against the decision of Slough Borough Council.
 - The application ref P/03290/004, dated 26 September 2022, was refused by notice dated 13 December 2022.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which an LDC is sought is side dormer.
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Decision

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

Applications for costs

2. An application for costs has been made by Mr Grewal against Slough Borough Council. The application is the subject of a separate decision.

Reasons

3. The main issue is whether the side dormer is 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 (the 2015 GPDO). To satisfy criteria B.1(d)(ii) of Class B the cubic content of the resulting roof space of the dwelling must not exceed the cubic content of the original roof space by more than 50 cubic metres.
4. 64 Upton Court Road is a detached dwelling that has been extended pursuant to the grant of planning permission P/03290/002. A subsequent application for an LDC for a side dormer was refused because "...the proposal would not fall within the provisions of B.1(d), Class B, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres...".
5. The side dormer that has been introduced on to the roof of the dwelling is significantly smaller than that for which an LDC was previously refused. The LDC application for the side dormer as now built was refused because, in brief, "...the building operations involved in the construction of the dwelling are unlawful, including the raised ridge height and eaves, first floor gable and the erection of the dormer". The LDC application was for a 'side dormer' and did not seek to establish the lawfulness of any other works.

6. The Council has not submitted an appeal statement and are relying on their Officer's delegated report prepared at application stage. In the report the application is assessed against all the criteria of Class B. The operations were found to satisfy all criteria except for B.1(b), which requires the height of the dwelling, as a result of the works, not to exceed the height of the highest part of the existing roof. This can be set aside because the application did not seek to establish the lawfulness of any increase in the height of the roof of the dwelling.

7. The report assessed the side dormer against criteria B.1(d)(ii). The conclusion reached was that "The total difference between the original roof and existing roof with all additions including the dormer window is 35.4 cubic metres". On this basis the author of the report further concluded that the side dormer complies with criteria B.1(d)(ii) of Class B. There is good reason therefore, on the basis of the Council's own evidence, to conclude that the side dormer is development permitted under Class B of Part 1 of Schedule 2 of the 2015 GPDO.

8. In their response to the application for an award of costs the Council has stated that "...development cannot retrospectively be made permitted development". Development that is permitted under the provisions of the 2015 GPDO can be carried out without the grant of planning permission and without any need to obtain an LDC beforehand. A property owner who undertakes permitted development is entitled, at any time, to apply for an LDC to ascertain the lawfulness of the development they have carried out.

9. For the reasons given the Council's refusal to grant an LDC for 'side dormer' at 62 Upton Court Road, Slough 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 26 September 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched 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 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

Side dormer

Second Schedule

Land at 64 Upton Court Road, Slough SL3 7LZ

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: 18 December 2023

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Scale: Not to Scale

