



Appeal Decision

Site visit made on 21 November 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/G5180/X/22/3311145
16 Hilborough Way, Orpington, BR6 7EW

- 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 Grant Gibson against the decision of London Borough of Bromley.
 - The application ref DC/22/03536/PLUD, dated 25 August 2022, was refused by notice dated 8 November 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 loft conversion including rear dormer window.
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the loft conversion including rear dormer window would have been lawful on the date of the LDC application on the basis that planning permission would have been granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

3. Subject to limitations and conditions, Article 3 and Schedule 2, Part 1, Class B of the GPDO grant planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
4. The only issue in dispute is condition B.2(b)(i)(aa) which states that '*the enlargement must be constructed so that—*
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—
(aa) the eaves of the original roof are maintained or reinstated;'
5. The appeal relates to a semi-detached bungalow with flat roof rear extension that runs into the rear pitch of the original roof and wraps around part of the side of the bungalow. As a result of that extension, the pre-existing rear eaves line has been substantially lost.

6. The Council's position is that the proposal would not fall within the scope of Class B because it is not an enlargement which joins the original roof to the roof of a rear or side extension and the eaves of the original roof would not be reinstated as required by condition B.2(b)(i)(aa). The Council's view is that the condition is intended to permit development but not to permit unfettered extension after extension.
7. The appellant argues that the exception is met in that the enlargement (dormer) joins the original roof to a rear extension and on that basis there is no requirement to reinstate the eaves.
8. I agree with the latter position. As described, the original roof already joins the roof of the rear extension and the bottom of the proposed dormer would do likewise. The appeal development therefore meets the exemption in B.2(b)(i) and it is not necessary to go on to apply the provisions in (aa).
9. On this condition, the Technical Guidance for permitted development rights for householders explains that it is sometimes necessary to remove the eaves of the original roof while works are carried out, and that to be permitted development eaves that are temporarily removed should be reinstated. That scenario cannot be applied in this case because the vast majority of the rear eaves have already been permanently removed.
10. The Council does not raise any other reason why the development would not be permitted development and I find no reason to do so either.
11. Accordingly, the proposed development would have been lawful on the date of the LDC application on the basis that it would have been permitted development by virtue of the provisions of Schedule 2, Part 1, Class B of the GPDO and thus would have been granted planning permission by Article 3(1) of the same.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC 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.

Richard S 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 25 August 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 operations constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and would be granted planning permission by Article 3(1) of the same.

Signed

Richard S Jones

INSPECTOR

Date: [18 January 2024]

Reference: APP/G5180/X/22/3311145

First Schedule

Loft conversion including rear dormer window.

Second Schedule

16 Hilborough Way, Orpington, BR6 7EW

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, was 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 January 2024]

by **Richard S Jones BA(Hons), BTP, MRTPI**

Land at: 16 Hilborough Way, Orpington, BR6 7EW

Reference: APP/G5180/X/22/3311145

Scale: Not to Scale

