



Appeal Decision

Site visit made on 16 January 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/M5450/X/22/3306908

31 Sudbury Court Drive, Harrow HA1 3SZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gurjeet Dhillon against the decision of the London Borough of Harrow.
 - The application Ref P/2513/22, dated 4 July 2022, was refused by notice dated 31 August 2022.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is "alterations and extension to roof; wrap-a-round sides to rear dormer with Juliette balcony".
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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 considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
3. The appellant is seeking an LDC for alterations to the roof of a detached house. The dispute between the parties concerns the interpretation of Schedule 2, Part 1, Class B1(d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. Class B grants deemed planning permission for development involving the enlargement of a dwelling house consisting of an addition or alteration to its roof, subject to conditions and limitations. Under B.1(d) development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than - (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case. The appeal relates to a detached house and so 50 cubic metres applies. B.3 provides that for the purposes of Class B, "resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original¹ roof space, whether permitted by this Class or not.

¹ Article 2 of the GPDO (Interpretation), states that original means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date.

5. The Technical Guidance² advises that – “To be permitted development any additional roof space created must not increase the volume of the original roof space of the house by more than 40 cubic metres for terraced houses and 50 cubic metres for semi-detached and detached houses. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. ‘Original roof space’ will be that roof space in the ‘original building’, which means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date”.
6. There is no dispute that the volume created by the roof space of the existing two-storey side extension, and the proposed dormer extension should form part of the allowance. However, the Council is of the opinion that a flat roof over a rear extension should also be included, in which case, the proposal would not be permitted development. The appellant takes the contrary view.

Main Issue

7. The main issue is whether the Council’s decision to refuse to grant an LDC was well-founded.

Reasons

8. As set out above, the Council decided that the proposal would not comply with B.1(d), because the addition of the proposed roof extension, plus the flat roof construction of the existing rear extension, would exceed the 50 cubic metres allowed. There has been an apparent change in the interpretation of this part of the GPDO by the Council. The appellant has provided a calculation for a previous application for a loft conversion at the site in which the Council did not include any calculation for the flat roof construction of the two-storey rear extension (Ref P/0275/22). The appellant amended the proposal to suit the method of calculation used by the Council to ensure the scheme would fall within permitted development rights. However, the Council subsequently introduced an additional volume for the flat roof.
9. I disagree with the Council’s interpretation of B.1(d) for the following reasons. Firstly, the flat roof of the existing rear extension does not include any roof void as it comprises a solid slab of construction containing joists and insulation, as the appellant explains. No additional roof space has been created.
10. Moreover, the GPDO provides clarification as to what the term ‘resulting roof space’ means. It means the roof space as enlarged, taking into account any enlargement to the original roof space. The rear extension is not an enlargement to the original roof space, it is an unrelated extension with a flat roof. I accept that the Council’s stance may apply in a situation where there is an existing extension with a roof that joins onto the roof on the main house. This would be considered an enlargement to the original roof space. This applies to the pitched roof over the side extension at the appeal site, which is rightly included in the calculation.
11. However, I do not consider that the GPDO intended any extension, such as the two-storey rear extension, which is unrelated to the roof of the main house to be included. Especially as in this case where there is no volume created in any

² MHCLG – Permitted Development Rights for Householders: Technical Guidance, September 2019.

event. I consider the calculations in relation to the flat roof should be discounted, therefore.

12. Overall, I am satisfied that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres and so the development proposed would be permitted under Class B.

Conclusion

13. I find that the development proposed would be lawful as it would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the GPDO, and so express planning permission would not be required.
14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "alterations and extension to roof; wrap-a-round sides to rear dormer with Juliette balcony" 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.

D Moore

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 4 July 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, 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 development proposed would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class B to the Town and Country Planning (General Permitted Development) (England) Order 2015, and so express planning permission would not be required.

Signed

D Moore

Inspector

Date: 23 January 2024

Reference: APP/M5450/X/22/3306908

First Schedule

Alterations and extension to roof; wrap-a-round sides to rear dormer with Juliette balcony

Second Schedule

Land at 31 Sudbury Court Drive, Harrow HA1 3SZ

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 use/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: 23 January 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

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Scale: NTS

