



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

Appeal Ref: APP/L3625/X/22/3294933

12 Effingham Road, Reigate RH2 7JN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 and Mrs K Morris against the decision of Reigate & Banstead Borough Council.
 - The application Ref 21/02818/CLP, dated 28 October 2021, was refused by notice dated 23 December 2021.
 - 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: Construction of dormer roof in existing loft space to provide additional room.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. Given the appeal relates to the lawfulness of a proposed development and the issues before me, which I shall describe below, a site visit would have no bearing on my assessment. The parties also accept that it is not necessary for me to enter the site to check measurements or other relevant facts. Injustice to the parties therefore does not arise from determining the appeal on the basis of the written evidence before me.

Application for Costs

3. An application for costs was made by Mr and Mrs K Morris against the decision of Reigate & Banstead Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Council's decision to refuse a certificate of proposed development was well founded.

Reasons

5. The site comprises a dwelling of traditional appearance accessed from Effingham Road. A certificate of lawfulness is sought for a proposed development relating to the construction of a dormer to the rear roof-slope of the dwelling as well as a roof light at the front to facilitate additional internal

accommodation. It is therefore not a hip-to-gable enlargement as has been suggested by the Council.

6. In matters such as this, the onus is on the appellants to demonstrate their case on the balance of probabilities that the proposal would be permitted development by virtue to the Order¹.
7. The Council has contended that the proposed dormer would not be permitted development in respect of its relationship with the eaves of the dwelling. However, the submitted plan demonstrates that the eaves of the original roof would be maintained, and that the dormer would be set back 200mm from the edge of the eaves.
8. Furthermore, whilst the dormer would not be set back or recessed from the gabled wall, this does not form part of the eaves of the roof, but rather the verge of the roof. The ridge would also not be extended. The proposed dormer therefore does not contravene the Order in these respects.
9. The Order also requires for the materials used in any exterior work to be of a similar appearance to those used in the construction of the exterior of the dwelling. I am satisfied the use of plain tiles on the dormer would suffice for the purposes of this condition and note this has since been accepted by the Council², albeit with a colour specified. It is then not necessary to amend the description of the proposal, as has been suggested, as it is already a condition of the permitted development right that materials of a similar appearance should be used.
10. As a matter of fact and degree the appellants have therefore demonstrated on the balance of probabilities that the proposed development would be lawful and so a certificate should now be issued.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness 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.

Formal Decision

12. The appeal is allowed and attached to this decision is a certificate of lawfulness describing the proposed development which is considered to be lawful.

Paul T Hocking

INSPECTOR

¹ Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015

² Council ref: 22/01584/CLP



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 28 October 2021 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellants have demonstrated on the balance of probabilities that the proposed development would be lawful.

Signed

Paul T Hocking

Inspector

Date: 9 February 2024

Reference: APP/L3625/X/22/3294933

First Schedule

Construction of dormer roof in existing loft space to provide additional room in accordance with drawing ref: 21011 ER 01.

Second Schedule

Land at 12 Effingham Road, Reigate RH2 7JN

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: 9 February 2024

by **Paul T Hocking BA MSc MRTPI**

Land at 12 Effingham Road, Reigate RH2 7JN

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Scale: DO NOT SCALE

