



Appeal Decision

Site visit made on 23 January 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/U2750/X/23/3326084

21 St. Johns Road, Harrogate, North Yorkshire HG1 3AF

- 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 Joel Morrell against the decision of North Yorkshire Council.
- The application ref ZC23/01434/CLOPUD, dated 13 April 2023, was refused by notice dated 31 May 2023.
- 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 the erection of a rear dormer and hip to gable extension.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed erection of a rear dormer and hip to gable extension which is found to be lawful.

Preliminary Matters

2. The appellant's initial application form does not set out a description of the proposed development for which a lawful development certificate (LDC) is sought. In the absence of a comprehensive development description on the application form I have instead used the development description given to the proposal as set out on the Council's decision notice. I note too that this description has also subsequently been adopted by the appellant. I am satisfied that this accurately describes the proposal to which this appeal relates.

Background and Main Issue

3. The appeal property is a two storey semi-detached house. There is no dispute that the property has previously been extended by way of a single storey side extension and a single storey rear extension. Both extensions have lean-to pitched roofs; the rear extension roof terminating just below the cill level of the first floor rear windows, and that of the side extension terminating just below the cill level of a first floor side window. The main house roof has not been altered or extended.
4. The appellant seeks an LDC for the erection of a rear dormer and a hip to gable extension. The appellant's calculations for the cubic content of the proposed dormer window and hip to gable extensions – 42.9m³ – is not disputed by the Council. This, the appellant argues, should ensure that the proposed development falls below the limitations placed upon such extensions by paragraph B.1.(d)(ii) of Class B, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order).

As a consequence, the appellant continues, the proposal should be permitted by virtue of Class B.

5. In such appeals, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Having regard to the above, the main issue is therefore whether or not the Council's decision to refuse to grant a lawful development certificate (LDC) was well founded.

Reasons

6. Class B, Part 1 of Schedule 2 of the Order permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Paragraph B.1 sets out a range of exclusions or limitations to the permission granted by Class B. Pertinent to the matter before me is the content of paragraph B.1.(d)(ii) of the Order, whereby development is not permitted if *'..the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres...'*
7. It is not disputed that the appeal property has previously been extended. Whilst in isolation the appeal proposal would fall below the limitation set out at paragraph B.1.(d)(ii), the Council is of the opinion, in refusing to grant the LDC, that the roofs of the previous extensions count against the limitation set out here. Thus cumulatively, the Council state, the alterations to the roof would exceed 50m³ and cannot therefore benefit from the permission granted by Class B.
8. Paragraph B.3 of the Order offers interpretation for the purposes of assessment against the provisions of Class B. It states that the *"resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not'*.
9. Further assistance in interpreting the Order's provisions are set out in the *'Permitted development rights for householders: Technical Guidance'*¹ (the Guidance) document. With regard to the provisions of Class B.1(d), the Guidance states that any previous enlargement to the original roof space in any part of the house must be included in this volume allowance. The 'original roof space' shall be that roof space in the 'original building', the latter being the building as it existed on 1 July 1948 if built prior to that date or, as it was built if built after that date. In other words, previous extensions that did not result in an enlargement to the 'original roof space', that being the roof of the building as it existed when the building was built, do not form part of the allowance.
10. The previous extensions were not enlargements to the original roof space of the house. Rather, the single storey side and rear extensions were extensions with roofs, rather than an enlargement to the original roof space of the house. The volume of the roof structures, agreed by the parties to be 18m³, is not therefore relevant for the purposes of a determination regarding Class B's provisions. As such, the proposed dormer and hip to gable extension would have a volume of less than 50m³ and therefore below the limitation set out in paragraph B.1.(d)(ii). The proposed development is permitted under Class B of the Order.

¹ Ministry of Housing, Communities & Local Government – September 2019

Conclusion

11. 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 the erection of a dormer and hip to gable extension 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.

G Robbie

INSPECTOR



The Planning Inspectorate

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 13 April 2023 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 proposed erection of a rear dormer and hip to gable extension is permitted development pursuant to Class B of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for which planning permission is granted by Article 3(1) of that Order.

Signed

G Robbie
Inspector

Date: 15 February 2024

Reference: APP/U2750/X/23/3326084

First Schedule

Erection of a rear dormer and hip to gable extension

Second Schedule

21 St. Johns Road, Harrogate, North Yorkshire HG1 3AF

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 use /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 /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 use /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:
15 February 2024

by G Robbie BA(Hons) BPI MRTPI

Land at: 21 St. Johns Road, Harrogate, North Yorkshire HG1 3AF

Reference: APP/U2750/X/23/3326084

Scale: Not to Scale

