



Appeal Decision

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/N1920/X/22/3308915

5 Winstre Road, Borehamwood, Hertfordshire WD6 5DR

- 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 Gaurav Sood of Omkaar Technologies Ltd against the decision of Hertsmere Borough Council.
 - The application, reference 22/0553/CLP, dated 28 March 2022, was refused by notice dated 24 May 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is: loft conversion.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although on the application form the appellant described the proposed development as "Loft Conversion", the Council registered it as "Conversion of loft to habitable room to include hip to gable roof alterations, side dormer, 4 front roof lights and removal of chimney". That description was also given in the Council's notice of refusal, and the appellant has adopted the Council's description in the appeal form. I have therefore considered the appeal on that basis.
3. It has not been necessary for me to carry out a site visit, as the plans provided clearly show the proposed development and the existing dwelling and its surroundings at the time the application was made, which is the relevant date.

Main Issue

4. The main issue is whether the decision of the Council to refuse the application for an LDC was well founded.

Reasons

5. Appeals relating to a Certificate of Lawful Use or Development (LDC) are confined to the narrow remit of determining whether the Council's refusal was well founded. The planning merits of the proposal are not for consideration.
6. Appellants are required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'. The burden of proof is with the appellant to demonstrate that the proposed development would have been lawful on the date the application was made (the relevant date).

7. Section 191(2) of the Act states that operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. There is no dispute that the proposal amounts to development for which planning permission is required.
9. The primary consideration is therefore whether, at the relevant date, the development would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), on the basis that it would have constituted 'permitted development' under Part 1 of Schedule 2 of the GPDO.
10. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse. Class B of Part 1 sets out that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. But development is not permitted if it meets any of the criteria set out under paragraph B.1.
11. The criteria in dispute between the parties are: B.1.(c), whether any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway; and B.2.(c), the conditions that any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
12. There is no definition of 'principal elevation' in the GPDO. However, the 'Permitted development rights for householders - Technical Guidance'¹ advises on the general understanding of the term, and I apply that approach below.
13. 5 Winstre Road (No 5) is a two-storey dwelling at the end of a terrace of four. No 5 has its front door at the end of the terrace, rather than on the elevation facing Winstre Road.
14. The elevation facing the road is wider than that containing the front door, but it has only two windows serving the living room and a bedroom, plus a narrow window serving the staircase. It is a relatively plain frontage, and without significant architectural features, such as a bay window, and does not read as the principal elevation.
15. Although narrower, the end elevation, which contains the front door, features kitchen, bedroom and bathroom windows and a porch feature, and more typically resembles a principal domestic frontage. The appellant advises that development being undertaken with planning permission will move the main entrance to the front of the house, but that had not occurred at the date the application was submitted.
16. I therefore find that the principal elevation is that at the end of the terrace, and not that which faces Winstre Road.

¹ Ministry of Housing, Communities and Local Government - September 2019

17. The development would extend the roof beyond the plane of the existing hipped roof slope on the principal elevation. The principal elevation fronts a highway used for accessing garage blocks, and for the purposes of Part 1, a 'highway' includes an unadopted street or private way². The works would therefore extend beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. As a consequence, the development would fall within the parameters of criterion B.1.(c).
18. As the end elevation is the principal elevation of the dwelling, the proposed dormer windows would be inserted into a roof slope forming a side elevation of the dwellinghouse. They would also be the main windows for each room in the loft space, and are not proposed to be obscure glazed and non-opening. Neither would the parts of the windows which could be opened be more than 1.7 metres above the floor of the room in which the windows would be installed. Accordingly, the development would not meet the conditions in B.2.(c).
19. The proposed development would therefore not have been permitted development under Class B of Part 1, Schedule 2, of the GPDO on the relevant date. As a result, the development would not have been granted planning permission by Article 3(1) of the GPDO at that date.
20. Therefore, although the development would not have constituted a contravention of any of the requirements of any enforcement notice then in force, it would have constituted development without planning permission. Enforcement action could therefore have been taken at the relevant date. Consequently, the development would not have been lawful under Section 191(2) of the Act.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of conversion of loft to habitable room to include hip to gable roof alterations, side dormer, 4 front roof lights and removal of chimney was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Peter White

INSPECTOR

² GPDO Schedule 2, Part 1, I. (Interpretation of Part 1)