



Appeal Decisions

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Appeal A Ref: APP/B1930/X/22/3304125

2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

- 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 Shashi Rathod against the decision of St Albans City Council.
 - The application ref 5/22/0671, dated 11 March 2022, was refused by notice dated 4 May 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 a rear extension 4m from the rear elevation of a detached dwelling.
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Appeal B Ref: APP/B1930/X/22/3304128

2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

- 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 Shashi Rathod against the decision of St Albans City Council.
 - The application ref 5/22/0663, dated 11 March 2022, was refused by notice dated 4 May 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 a rear dormer to facilitate a loft conversion.
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Appeal C Ref: APP/B1930/X/22/3304130

2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

- 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 Shashi Rathod against the decision of St Albans City Council.
 - The application ref 5/22/0670, dated 11 March 2022, was refused by notice dated 4 May 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 a side extension to a detached dwelling to include double garage, and extending 4m beyond the rear building line.
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the proposed development which is found to be lawful.
2. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the proposed development which is found to be lawful.
3. Appeal C is dismissed.

Applications for costs

4. Applications for costs, with respect to Appeals A, B, and C have been made by Mr Shashi Rathod against St Albans City Council. This is the subject of a separate decision.

Procedural Matters

5. In an appeal under s195 of the Act the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. Consequently, no site visit was made as it was not necessary for me to view the property in order to determine the appeals.

Main Issue

6. The main issue in these appeals is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Appeals A and B

7. The Council's single reason for refusing to grant an LDC in respect of both the proposed rear extension (Appeal A) and the proposed rear dormer to facilitate a loft conversion (Appeal B) was that, by virtue of condition 9 of outline planning permission 5/93/1922, permitted development rights had been removed. This condition stated that '*no enlargement of the dwelling(s) hereby permitted, or any building or enclosure within the site curtilage shall be built or shall take place without the prior permission of the local planning authority or secretary of state*'.
8. However, the Council now accepts that the appeal property was in fact constructed pursuant to planning permission 5/97/0258. This permission does not include a condition removing permitted development rights for any enlargement of the dwelling or any building or enclosure within its curtilage. The Council also accept that the proposals meet the various conditions and limitations as set out under the relevant classes of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I see no reason to disagree with this view.
9. Consequently, I find that the proposals as shown on the submitted plans in relation to both Appeal A and Appeal B would be granted planning permission by Article 3, Schedule 2, Part 1, Classes A, B, and C of the GPDO, and thus would have been lawful at the time of the application.

Appeal C

10. The Council's single reason for refusing to grant an LDC in respect of the proposed side extension to include a double garage was also that, by virtue of condition 9 of outline planning permission 5/93/1922, permitted development rights had been removed. For the reasons already outlined above, this condition is of no relevance as the property was constructed pursuant to planning permission 5/97/0258.
11. Nevertheless, the Council now point to conditions 3 and 4 of planning permission 5/97/0258. Condition 3 states: '*Notwithstanding the provisions of any order made pursuant to the provisions of Section 59 of the Town and*

Country Planning Act 1990 (as amended) and any subsequent re-enactment thereof, no building or structure or any kind of accommodation for motor vehicles shall be erected without planning permission being granted on a separate application”.

12. As far as I have been made aware, the proposal would satisfy the relevant size and locational limitations as well as the relevant conditions in Class A of Part 1 of the GPDO. However, the granting of planning permission by the GPDO is not absolute and is qualified by other statutory provisions. The effect of the GPDO at Article 3(4) is that development cannot be permitted where it would be contrary to a condition on a grant of express planning permission. Relevant case law confirms that conditions removing permitted development rights otherwise available under a Development Order have a continuing effect in respect of subsequent versions of that Order.
13. Condition 3 refers to *"no building or structure....."*. The definition of a "building" in s336(1) of the Act includes any structure or erection, and any part of a building. Therefore, in my view, reference in the condition to "building" is meant to be inclusive of extensions and alterations to the dwelling within what otherwise would have been permitted by Class A. It follows that, to my mind, condition 3 is clear in that it removes rights under the GPDO for any such development that would include accommodation for motor vehicles.
14. The description of the proposed development on the application form specifically states that it will include a garage. The submitted plans clearly show the proposed side extension to consist of a 'garage', with a garage door shown on its front elevation. The proposed floor plans also show a vehicle parked within it. Although the appellant states that he does not require the side extension to include a garage, and the intention was to establish that in general terms permitted development rights remained in place for a side extension, the proposal is evidently for the erection of a building for the accommodation of motor vehicles. Accordingly, the proposed development would be contrary to condition 3.
15. The Council also refer to condition 4 of planning permission 5/97/0258 which states *"No provisions of Schedule 2, Part I, Class A of the Town and Country Planning (General Permitted Development) Order 1995 shall not apply to any garage to which this permission relates. No internal or external alterations shall take place to any garage which would preclude its use for housing motor vehicles without the permission of the District Local Planning Authority first being obtained"*.
16. Whilst it is clear that the proposed side extension would be built over much of its footprint, the application does not include the demolition of the existing garage. Nevertheless, given the conflict with condition 3, even if the proposed development did not contravene condition 4, this would not assist the appellant in showing that the proposed development would, at the date of the application, be lawful.
17. Therefore, for the reasons given above, the proposal would be contrary to condition 3 and it cannot benefit from the permitted development rights in the GPDO. The appellant has been unable to show otherwise. It follows that the proposal would not be lawful.

Other Matters

18. One third party representation has been received from a neighbour who raised concerns regarding an alleged lack of consistency in decision making by the Council, and whether such forms of development are appropriate and in keeping with the area. However, the planning merits of the matters applied for do not fall to be considered, with the decision based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. Similarly, decisions made by the Council in relation to other developments or sites do not alter my findings in relation to this appeal.

Conclusion

Appeals A and B

19. 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 was not well-founded and the appeals succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal C

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

David 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 11 March 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 proposed rear extension would satisfy the conditions and limitations of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and would therefore be permitted development.

Signed

David Jones

Inspector

Date: 13 May 2024

Reference: APP/B1930/X/22/3304125

First Schedule

Rear extension

Second Schedule

Land at 2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

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: 13 May 2024

by David Jones BSc (Hons) MPlan MRTPI

Land at: 2 Princess Diana Drive, St Albans Hertfordshire AL4 0DF

Reference: APP/B1930/X/22/3304125

Scale: Not to Scale



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 11 March 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 proposed rear dormer would satisfy the conditions and limitations of Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and would therefore be permitted development.

Signed

David Jones

Inspector

Date: 13 May 2024

Reference: APP/B1930/X/22/3304128

First Schedule

Rear dormer to facilitate a loft conversion

Second Schedule

Land at 2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

IMPORTANT NOTES – SEE OVER

NOTES

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This is the plan referred to in the Lawful Development Certificate dated: 13 May 2024

by **David Jones BSc (Hons) MPlan MRTPI**

Land at: 2 Princess Diana Drive, St Albans, Hertfordshire AL4 0DF

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