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## Appeal Decisions

Site visit made on 25 April 2024

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 June 2024**

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**Appeal Ref: APP/W2465/X/24/3339004 ('Appeal A')**  
**593 Welford Road, Leicester LE2 6FP**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 concerning the grant of a certificate of lawful use or development (LDC).
- The appeal is made by S Veja against the decision of Leicester City Council.
- The application (Ref. 20232346), dated 8 December 2023, was determined by the Council by notice dated 30 January 2024.
- 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 described in the application as 'side hip to gable conversion; rear box dormer; front skylights'.

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

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**Appeal Ref: APP/W2465/W/24/3338861 ('Appeal B')**  
**593 Welford Road, Leicester LE2 6FP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by S Veja against Leicester City Council.
- The application, Ref 20232265, is dated 29 November 2023.
- The development proposed is described in the application as 'loft alterations, two storey side extension with single storey front and rear extension to property'.

**Summary Decision: the appeal is dismissed.**

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### Preliminary Matters

1. The appellant's appeal forms in both appeals suggested it was unnecessary for me to enter the site in order to establish relevant facts. I therefore conducted an unaccompanied site visit, viewing the property from the public realm.

### Appeal A

2. The main issues arising in Appeal A are dealt with in my reasoning below. As well as the appellant's reason for making the appeal, concerning part of the Council's reasoning, those issues concern the effect and nature of the certificate already issued by the Council.

### Reasons

3. The plan supplied by the appellant with Appeal A is Revision B of plan number 593WR-A0-001. It appears the original was dated 9 October 2023; revision A

was produced on 10 November 2023 following a meeting and then revision B was produced on 28 November 2023. As the application was then made on 8 December 2023 I understand the revision B drawing (described as 'LDC – Drawing') to have been the one submitted with the relevant application.

4. I raise this because the 'details of proposal' described as being lawful in the relevant certificate, issued by the Council on 30 January 2024, do not directly refer to any submitted drawings. It certifies that the 'details of proposal' as described in Part 1 of the certificate would have been lawful on the application date (recorded by the Council as being 9 December 2023). The 'details' are then described as 'construction of two rooflights at front; dormer at rear of house' without cross-referring to any plans.
5. The first of the Council's reasons for issuing the certificate (alternatively described as, or subsequently appearing as, 'notes for applicant') tells the applicant that the proposed development 'would be lawful if carried out in accordance with the submitted plans' because amounting to permitted development in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO'). However, a reason for issuing a certificate, although required by section 192(3)(c) to be included as part of the certificate, is not the operative part of the certificate, which is described by section 192(3)(b). The reason (or note) here then refers to the submitted plans as '593WR/A0-001' without inclusion of any revision number. But there is no operative reference to any submitted plan.
6. The particular reason for the appellant's appeal is her objection to the second of the Council's reasons (or 'notes for applicant') which points out that the development certified as lawful should not be carried out in conjunction with another planning consent, because this might result in a development which is unauthorised.
7. By itself this statement is unobjectionable, because it does no more than reflect the position as set out in the well-known case of *Watts*<sup>1</sup> which is to say that it is inherent in the GPDO that the precise sequence of doing works can affect the availability of the permission which the GPDO provides. In particular, the cubic content of the "resulting building" with which the relevant GPDO Class or Classes is concerned must be measured when the works relying on the GPDO are substantially completed. If, between the start of such 'GPDO' works and their conclusion, the building which is being altered pursuant to the GPDO is otherwise enlarged, improved or altered so that the cubic content of the "resulting building" together with the GPDO works would now exceed the relevant tolerance under the GPDO, those GPDO works cease to be protected by the GPDO and can be enforced against.
8. I do not understand the Council's statement to go any further than that, or alternatively to point out that the certificate is being granted in respect of the works as described and not of any different roof project comprising larger extensions in which the works might be subsumed. In any event an appeal under section 195(1) does not lie against the Council's reasons for issuing a certificate, or against any informative notes supplied with it, as opposed to against its substantive content.

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<sup>1</sup> *R (Watts) v Secretary of State for the Environment, Transport & the Regions* [2002] EWHC 993 (Admin)

9. Turning to that substantive content, the application form here described the proposal as a 'side hip to gable conversion; rear box dormer; front skylights'. The 'details of proposal' then purportedly certified as lawful by the Council were described as 'two rooflights at front; dormer at rear of house' thus omitting reference to the hip to gable conversion element. The officer's report nonetheless clearly refers to the hip to gable element and finds it to be lawful at the relevant date.
10. Any certificate issued under section 192 of the 1990 Act is required, by section 193(4), to be in such form (or substantially to the same effect) as may be prescribed by a development order. That form is found in Schedule 8 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the DMPO'). That includes the requirement for a certificate to include a 'full description of the use, operations or other matter, if necessary, by reference to details in the application or submitted plans...'. It also requires reasons to be given, reflecting section 192(3).
11. It appears to me that the certificate issued by the Council does not comply with the requirements of Schedule 8 to the DMPO. Summarising the reasons why, (i) it does not fully describe the operations, omitting the hip to gable element; (ii) it gives the wrong plan reference, omitting reference to revision B; (iii) it does not include reference to the submitted plans in the operative part of the certificate; and (iv) it is doubtful whether any reasons are duly given, because the section of the certificate that follows the purported introduction of the Council's reasons is given a different sub-heading entitled 'Notes for Applicant'.
12. Here, the Council contest the validity of the appeal because they say it is incorrect to say that they have refused, or part-refused, the application. A right of appeal under section 195(1) of the 1990 Act arises only where the application is refused, or refused in part, or the authority fail to give timely notice of their decision on the application. Here at the very least I consider the Council's certificate amounts to a refusal in part, because it fails to describe the hip to gable element of the proposal. I therefore consider whether to modify the certificate already issued by the Council.
13. On that, I have no reason to disagree with the substantive findings of the officer's report which addressed the proposal's compliance with the various restrictions of the GDPO and conclude, like them, that the proposal would have been permitted development at the relevant date.

### **Conclusion on Appeal A**

14. For these reasons I conclude, on the evidence now available, that insofar as the Council has refused to grant a certificate of lawful use or development in respect of a side hip to gable conversion; rear box dormer; front skylights at 593 Welford Road, Leicester LE2 6FP, that refusal 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. I will modify, by way of substitution and replacement, the certificate previously granted by the Council on 30 January 2024.
15. I am conscious that my findings do not reflect the argued position of either party. However, as my conclusion is only to give effect to the certificate in the terms as envisaged by the Council's officer's report, I have not found it necessary to seek further comments from the parties.

## Appeal B

16. The Council have not determined the application in Appeal B, but have set out in correspondence and in a delegated report completed the day after the appeal was made that they consider it unacceptable for four reasons. Those reasons, although reasons 1 & 2 can be taken together, give rise to the main issues in Appeal B. They are, first, the effects of the proposed development on the character and appearance of the area; secondly, the effects of the development (specifically the single storey rear extension element) on the living conditions of the adjoining occupiers at no. 591; and finally the effects of the development on the health and longevity of existing trees.

## Reasons

### *Effects on the character and appearance of the area*

17. Welford Road is a major highway flanked by residential dwellings on both sides. Those dwellings are largely semi-detached with hipped roofs and backing onto large rear gardens. Beyond those, the properties back onto allotment gardens to the west.
18. Some of the houses in the road have been extended in various ways. To the front these appear as some combination of single storey porch extensions forward of the principal elevation, hip-to-gable roof extensions to the side, and two-storey side extensions, some of which are flush with the existing front extension and some of which are set back and/or with a lower ridge height to the roof. No. 595 is now gabled to the side with a rear dormer; no. 589 has a recessed two-storey extension; no. 587 is gabled to the side with a single storey extension; no. 585 has a two-storey extension with a dropped ridge line. Similar developments have taken place on the opposite side of the road, where most two-storey side extensions that are flush with the principal elevation nonetheless demonstrate some subservience to the pre-existing house by having a dropped roof.
19. The existing property at no. 593 is unextended, constituting a two-storey three-bedroomed dwelling with a hipped roof and a single-storey garage to the southern side which abuts the property's boundary with no. 595.
20. The application plan supplied, no. 593WR-A0-001 revision A1, variously refers to a property in Stoke-on-Trent and also to no. 595 Welford Road, as well as to a differently-named applicant, but the location plan shown does clearly refer to the appeal property at no. 593. The drawings show the proposed extensions to the property, which are significant. A front porch area is to be created to the front, extending slightly forward of the existing bay window. Above that, a two-storey extension is to be built above the existing garage. This would be recessed slightly from the existing front elevation, and the front roof plane would also be recessed with a slightly lower ridge height. The existing hipped roof would become a gabled one, with the side extension also having a gable end. The roof plane to the rear would be flush with the existing, although the rear roof would be mostly replaced with a dormer extension taking up most of the width of the extended roof and having a maximum height of 2.1m. The rear wall of the side extension would be flush with the existing rear wall. However, most of the rear wall would be replaced with a single storey extension, which would extend to the full width of the extended property and have a pitched roof with a 4m ridge and 2.5m eaves. The single storey extension would build out

an additional 7m from the rear of the property, with an additional square rear porch of a further 2.7m to the southern side.

21. A hip-to-gable extension with rear dormer has been found to be lawful by the Council, and will be the subject of the lawful development certificate I have considered in Appeal A. Additionally I understand that a prior approval application has been made concerning a 6m rear single storey extension. The additional elements here are therefore the single storey extension to the front, the two-storey extension to the side (with consequent wider dormer window) and the additional length of the single storey rear extension.
22. No reason is given by the appellant why the extensions would comply with the development plan in respect of their effects on the character or appearance of the area, with the appeal having been submitted on the grounds that the local authority did not determine the application within the prescribed time and without seeking to agree an extension of time. The Council refer to relevant development plan policies, specifically Core Strategy Policy CS3 on this issue, and to a Supplementary Planning Document of 2008 and specifically to Appendix G, 'a design guide for house extensions'.
23. That guide sets out that a well designed extension should match the existing house and be in character with the neighbourhood. The two main design principles are that an extension should match the original appearance of the housing materials, roof form and scale and proportion of openings, and that it should not adversely affect the quality and appearance of the surrounding area. It goes on to say that the overall style of the house extension must be consistent with that of the original house.
24. Here the application describes the existing brickwork walls and states that the proposed finishes are also to be brickwork, so achieving a general matching of materials in relation to that aspect. The application form and drawing are silent as to the use of any other materials such as the roofs, including the proposed dormer, or window frames. No existing window openings are depicted on the drawing of the existing rear elevation, making a comparison impossible. The proposed windows to the front of the side and front extension do not appear to match the existing openings, with no top lights and apparently no external window sills. The upper floor window opening is relatively larger compared with the surrounding brickwork, taking up much of the recessed frontage, than the existing side front window.
25. The roof form of an extension should, according to the design guide, match that of the existing house. At this stage, that is a hipped roof and hence this part of the design guide would not be met by the roof works. The dormer window would substantially change the existing roof form, although other examples do exist, as they do of rear single storey extensions, some of similar depth to the one proposed here.
26. In the round, however, there are no comparable examples of such significant extensions to dwellings in the area whereby a gabled side extension, a front single storey extension, a near-full width rear dormer and a rear ground floor extension have all been achieved. The overall massing and bulk of the extensions, coupled with the failure to demonstrate the use of appropriate roof materials and windows, would result in development adversely affecting the area's character by producing a dominant and overbearing development out of character with the modest proportions of the existing house. The development

would be contrary to the requirement of policy CS3 to contribute positively to its surroundings and to the character of the local environment.

*Effects on living conditions of neighbouring occupiers*

27. Again the appellant makes no comment about the effects of the development on the adjoining neighbours. The Council's contention is that the rear ground floor extension will unacceptably impact on the neighbouring living conditions by reason of a loss of outlook, a loss of light to the principal room's window at no. 591, and by reason of overshadowing and overbearing impacts when viewed from the garden area of no. 591.
28. The design guide sets out that an important consideration when building an extension is the effect that it will have on neighbours. Extensions should not spoil the outlook from the main windows of principal rooms and gardens, and should not cause any significant loss of daylight. A rear extension on or close to the boundary of an adjoining house will in most cases be acceptable if up to 3 metres deep, but subject to what are referred to as 'the 45 degree guidelines'. Those guidelines are to the effect that a single storey rear extension should not extend beyond a line taken at 45 degrees from the centre of the ground floor window of any principal room in an adjoining property. The Council explain that this guideline will be significantly breached in this case, with the '45 degree line' exceeded beyond the entire width of the neighbours' French doors. No. 593 lies to the south of the adjoining house at no. 591 and thus overshadowing is also likely to result. The side eaves of the extension would be just under 2.5m high, so exceeding the boundary treatment by some height.
29. Whilst the extension might involve the removal of one or more trees which would themselves produce some diminution of natural light and of overshadowing effects at present, the excessive breach of the '45 degree guidelines' means that I am unable to conclude that the development's effects on the neighbouring living conditions would be acceptable, or that it would comply with the requirements of the development plan, specifically of policy PS10 of the City of Leicester Local Plan which requires an assessment of the effects of development on the provision of a quality living environment, including those of light and overshadowing.

*Effects of the development on trees*

30. The appellant contends that the proposed development would not impact on any trees. I consider this unlikely, from my observations of the site. The appellant questions why the effects on trees are relevant, given that no protection orders apply and their existence is not relevant to the application of permitted development rights. Whilst this may be the case, local development plan policy, UD06 of the Local Plan, nonetheless requires an assessment of the effects of development on landscape features that have amenity value including trees. The lack of statutory protection for the trees does not mean that they should be ignored when assessing development proposals.
31. The policy provides that permission will not be granted for development that impinges on any landscape features with amenity value, including trees, unless the removal of the particular feature would be in the interests of good landscape maintenance or the desirability of the proposed development would outweigh the amenity value of the relevant landscape feature.

32. Here, some of the trees in the garden of the appeal property are visible from the roadside and there is no dispute by the appellant that they have amenity value contributing to the character of the area. It is not explained why the removal of any trees would be in the interests of good landscape maintenance or should be justified by the benefits of the development. Accordingly as I cannot be satisfied that the development would not involve the removal of any trees or affect their health or longevity, the proposal fails to comply with the development plan for the area in this regard also.

#### *Other matters*

33. The appellant considers that if any particular part of the proposal gives rise to concerns, then that should be addressed and an opportunity given to provide amendments to it, and that the entire scheme should not be refused on the grounds of smaller elements of a proposal.
34. It may in some cases be possible to obtain pre-application advice from a local planning authority, although this was not pursued by the appellant in this case. It is more unusual for a proposal to be amended during the course of its consideration after an application is submitted, given the statutory timescales that apply and the need in some cases to re-consult interested parties if substantial amendments are sought. The appellant has not expressly sought to make a costs application in this case but I see no grounds for one on this basis. The applicant's suggestion that she should be reimbursed her application fee is beyond the scope of my considerations in this appeal.
35. As to whether a 'split decision' could be issued allowing unobjectionable parts of a proposal to proceed, in order to grant permission in part only the decision maker would need to understand how the proposal could be severed into its different elements. Here the scheme appears to have been conceived as a whole and it is not explained how feasible it would be to build out some elements but not others. Accordingly I decline to consider granting permission for part only of the proposal.

### **Conclusion on Appeal B**

36. For the reasons given above, the proposed development does not comply with the development plan for the area and Appeal B will be dismissed.

### **Formal Decisions**

#### **Appeal A**

37. The appeal is allowed and attached to this decision is a modified certificate of lawful use or development describing the proposed operations which are considered to be lawful.

#### **Appeal B**

38. The appeal is dismissed.

*Laura Renaudon*

INSPECTOR

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# 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

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Pursuant to section 195(2) of the Town and Country Planning Act 1990, this certificate modifies by way of substitution and replacement the certificate granted by Leicester City Council on 30 January 2024 under reference 20232346.

**IT IS HEREBY CERTIFIED** that on 8 December 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have been permitted by article 3 of and Classes B and C of Part 1 of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015.

Signed

*Laura Renaudon*

INSPECTOR

Date 17 June 2024

Reference: APP/W2465/X/24/3339004

## **First Schedule**

Side hip to gable extension, rear box dormer and front skylights in accordance with submitted drawing 593WR-A0-001 revision B entitled 'LDC – Drawing' dated 28 November 2023 produced by T. Davies.

## **Second Schedule**

Land at 593 Welford Road Leicester LE2 6FP

## 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: 17 June 2024

by **Laura Renaudon LLM LARTPI Solicitor**

**Land at: 593 Welford Road Leicester LE2 6FP**

**Reference: APP/W2465/X/24/3339004**

Scale: DO NOT SCALE

