



Appeal Decision

Site visit made on 6 March 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/Z0116/X/23/3333627

85 Hogarth Walk, Lockleaze, Bristol BS7 9XS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Henry Dorman, Rivers Birtwell against Bristol City Council.
 - The application ref 23/01341/CP is dated 31 March 2023.
 - The application was made under sections 192(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is the change of use from dwelling (C3) to small HMO (C4), as well as a 3metre deep single-storey extension proposed to the rear of the house.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use and proposed operation, which are found to be lawful.

Preliminary Matters

2. The application sought a certificate of lawful use and development (LDC) in respect of the proposed change of use of the building from a use falling within Use Class C3, to one falling within Use Class C4. In addition, it sought an LDC also in respect of a proposed addition to the property. It was held in *LB of Brent V SSLUHC & Yehuda Rothchild* [2022] EWHC 2051 (Admin), that it matters not in which order such matters are considered, as the permitted development rights for extensions extend to properties falling within both use classes.
3. The application was made under Section 192 of the Act, for a certificate of lawful use for proposed use and development. At the time of my site visit, a rear extension appeared to have been constructed. I have no information in respect of whether the proposed change of use had taken place. Nonetheless, I have based my decision on the details that were submitted with the application. Should there be any material differences between that which exists and that which I have considered, that is a matter for the Council to consider.

Main Issue

4. The main issue in respect of both elements of the appeal are whether or not they accord with the requirements of the relevant sections of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in order to comprise permitted development.

Reasons

Change of use

5. Part 3, Class L of the GPDO permits development consisting of the change of use of a building from a use falling within Use Class C3 to a use falling within Use Class C4. The Council is content that the existing use of the building on the date of application was that falling within Use Class C3; I have no reason to find differently. Moreover, the development would not result in the creation of two or more separate dwellinghouses. Accordingly, the change of use from a dwelling (C3) to small HMO (C4) would comply with Class L, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Extension

6. Part 1, Class A of the GPDO permits development within the curtilage of a dwellinghouse, comprising of the enlargement, improvement, or other alteration of that dwellinghouse, subject to a number of qualifications.
7. Considering the proposal against these limitations:
 - (a) the existing dwellinghouse use has not been granted by virtue of Class G, M, MA, N, P, PA, or Q of Part 3 of this Schedule (changes of use),
 - (b) the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse),
 - (c) the height of the part of the dwellinghouse enlarged, improved, or altered would not exceed the height of the highest part of the roof of the existing dwellinghouse,
 - (d) the height of the eaves of the part of the dwellinghouse enlarged, improved, or altered would not exceed the height of the eaves of the existing dwellinghouse,
 - (e) the enlarged part of the dwellinghouse would not extend beyond a wall which—
 - (i) forms the principal elevation of the original dwellinghouse; or
 - (ii) fronts a highway and forms a side elevation of the original dwellinghouse,
 - (f) the enlarged part of the dwellinghouse would have a single storey and would not extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a semi-detached dwellinghouse, nor would it exceed 4 metres in height,
 - (g) the dwellinghouse is not on article 2(3) land nor on a site of special scientific interest, and the enlarged part of the dwellinghouse would have a single storey and would not extend beyond the rear wall of the original dwellinghouse by more than 6 metres in the case of a semi-detached dwellinghouse, nor would it exceed 4 metres in height,
 - (h) the enlarged part of the dwellinghouse would not have more than a single storey,
 - (i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, but the height of the eaves of the enlarged part would not exceed 3 metres,
 - (j) the enlarged part of the dwellinghouse would not extend beyond a wall forming a side elevation of the original dwellinghouse,

- (ja) there has been no previous enlargement under Class A,
 - (k) it would not consist of or include the construction or provision of a verandah, balcony or raised platform; the installation, alteration, or replacement of a microwave antenna; the installation, alteration or replacement of a chimney, flue or soil and vent pipe; or an alteration to any part of the roof of the dwellinghouse, and
 - (l) the dwellinghouse was not built under Part 20 of the Schedule (construction of new dwellinghouses).
8. From the information before me, the proposed extension would not conflict with any of the relevant limitations. The details also show that the use of materials would be of a similar appearance to those used in the construction of the existing dwellinghouse, thus according with paragraph A.3(a) of Class A, Part 1. The Council also concludes that the proposal accords with the relevant requirements. Accordingly, I determine that the proposed extension would comply with Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Martin Allen

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 31 March 2023 the use and 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 reasons:

- The change of use from a dwelling (C3) to small HMO (C4) would comply with Class L, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.
- Furthermore, the proposed extension would comply with Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Signed

Martin Allen

Inspector

Date: 26 June 2024

Reference: APP/Z0116/X/23/3333627

First Schedule

The change of use from dwelling (C3) to small HMO (C4), as well as a 3metre deep single-storey extension proposed to the rear of the house.

Second Schedule

Land at 85 Hogarth Walk, Lockleaze, Bristol BS7 9XS

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: 26 June 2024

by Martin Allen BSc (Hons) MSc MRTPI

Land at: 85 Hogarth Walk, Lockleaze, Bristol BS7 9XS

Reference: APP/Z0116/X/23/3333627

Scale: Not to Scale

