



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2024

Appeal Ref: APP/X0415/X/23/3336180

170 High Street, Amersham, Buckinghamshire HP7 0EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Emily Thomson against the decision of Buckinghamshire Council.
 - The application ref PL/23/2559/SA, dated 6 August 2023, was refused by notice dated 20 November 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which an LDC is sought is 6 rooflights to front elevation and 6 rooflights to rear elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development for which an LDC is sought is taken from the Council's decision notice and is an accurate description of the proposed operations shown on the drawing provided by the appellant.
3. With the agreement of the parties a site visit was not undertaken.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This will turn on whether the building operation of the installation of 6 rooflights to the front elevation and 6 rooflights to the rear elevation would have been lawful if begun on the date of the application.

Reasons

5. Under section 191(2) of the Act an operation is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice in effect. There is no relevant enforcement notice in effect. It remains to be determined whether the installation of the rooflights would have been in breach of planning control, so that enforcement action could have been taken, on the date the LDC application was made. Whether it would have been expedient to take enforcement action is not a matter for consideration.
6. Article 3 and Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("Class B" of "the 2015 Order") grant planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions.

7. Neither party has stated whether the proposed development is permitted by Class B; however, the officer report that informed the Council's decision contains a list of constraints including a conservation area. Paragraph B.1.(f) of Part 1 confirms that planning permission is not granted by Class B if the dwellinghouse in question is on land within a conservation area, so Class B does not permit the proposed rooflights.
8. Article 3 and Class C of Part 1 of Schedule 2 to the 2015 Order ("Class C") grant planning permission for other alterations to the roof of a dwellinghouse, subject to 5 exceptions and limitations in paragraph C.1. Unlike Class B, there is no exception for development within conservation areas and no other stated exception or limitation applies.
9. Accordingly, the installation of the rooflights falls within the description of development permitted by Class C. However, Article 3(4) of the Order confirms that it does not permit development "contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."
10. The conditional grant of planning permission in 1993 for alterations, demolition and conversion¹ by which the dwellinghouse was created included condition 4, which stated:

Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 as amended (or any Order revoking and re-enacting that Order), no alterations, extensions or additions shall be made to the dwellinghouse hereby permitted which shall materially affect the external appearance of the building, nor shall there be erected any outbuildings or garage, nor shall any additional windows be installed or openings made in the external walls or roof, without express planning permission from the Local Planning Authority.

11. The Order named in the condition was revoked and re-enacted by a later Order that was in turn revoked and re-enacted by the 2015 Order, which has effect accordingly. Condition 4 therefore prevents the permission granted by Article 3 and Class C from applying to the appeal premises. As the installation of the rooflights is not permitted by the 2015 Order it would have been in breach of planning control if begun on the date of the LDC application. Enforcement action could thus have been taken in respect of it, so it would not have been a lawful operation.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of 6 rooflights to front elevation and 6 rooflights to rear elevation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR

¹ 93/0191/CH, granted 25 March 1993.