

Appeal Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/Z4310/X/23/3329277

220 Kingsheath Avenue, Liverpool L14 4AP

- 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 Miss Deborah Knox against the decision of Liverpool City Council.
 - The application ref 23LP/1752, dated 7 July 2023, was refused by notice dated 3 August 2023.
 - 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 dormer extension to the rear and hip to gable roof.
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Decision

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

Procedural Matters

2. In an appeal under s195 of the 1990 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 appeal.
3. I have taken the description of the proposed development from the Council's decision notice as it provides a more accurate and concise description than that outlined on the application form.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

5. The appeal property sits at the end of a row of dwellings and forms a corner plot at the junction of Kingsheath Avenue and Ruscombe Road. Subject to various limitations and conditions, Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

as amended ("the GPDO") permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

6. There is no dispute that the hip to gable element of the proposal meets the listed limitations and conditions of Class B. This includes the total cubic content of the additional roof space created by the hip to gable roof and rear dormer extension not exceeding the limits set out in paragraph B.1 (d).

7. The principal point at issue is the Council's determination that the dormer extension to the rear would not comply with condition B.2 (b)(i)(bb) which states that:

"(b) the enlargement must be constructed so that –

(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves."

8. The Council contend that the dormer extension as drawn on the submitted plan¹ would only be set 0.15 metres from the eaves, and thus would not comply with B.2 (b)(i)(bb). It is unclear how the Council obtained this figure, particularly given that 1:20 and 1:50 scale bars are both shown on the plan. I note though that only two of the drawings on the plan are specifically marked as being at a 1:20 scale with the remaining drawings, including the proposed side and rear elevations showing the dormer extension, at a 1:50 scale.

9. Nevertheless, the appellant has now provided an annotated version of the plan with the appeal which confirms that the dormer would be set in 0.55 metres from the eaves. This accords with my own assessment of the drawings which, in my view, shows that the dormer would be not less than 0.2 metres from the eaves. Taken together the evidence demonstrates that the dormer extension would comply with condition B.2 (b)(i)(bb).

10. The Council also raised concerns that the development would not accord with Class B.1 (e)(i) as it would include the alteration of a soil and vent pipe. Nevertheless, as highlighted by the Council, this aspect of the development would accord with Class G ("Chimneys, flues etc on a dwellinghouse"). I also find that the proposed roof light on the front elevation would accord with Class C ("Other alterations to the roof of a dwellinghouse").

11. Overall, having regard to all aspects of the development, I am satisfied that the proposal would be lawful as it would comply with all the conditions and limitations of Classes B, C, and G of Part 1 of the GPDO.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the proposed dormer extension to the rear and hip to gable roof was not well-founded and that the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

¹ DWG No 1669 B dated June 2023

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 7 July 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 dormer extension to the rear and hip to gable roof extension would satisfy the conditions and limitations of Classes B, C, and G of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), and would be permitted development. Planning permission for the development is therefore conferred by Article 3(1) and Classes B, C, and G of Schedule 2, Part 1 of the GPDO.

Signed

David Jones

Inspector

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First Schedule

Dormer extension to the rear and hip to gable roof

Second Schedule

Land at 220 Kingsheath Avenue, Liverpool L14 4AP

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, 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 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: 27 August 2024

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Scale: Not to Scale

