



Appeal Decision

No site visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/K3605/X/23/3316515

100 Portsmouth Road, Cobham, Surrey KT11 1HX

- 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 and Mrs Webb against the decision of Elmbridge Borough Council.
 - The application ref 2022/3374, dated 4 November 2022, was refused by notice dated 16 January 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 proposed hip to gable roof extension incorporating rear L-shaped dormer and associated roof lights.
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Decision

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

Preliminary Matters

2. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the appellant and the evidential test is the balance of probability. For this reason, a site visit to the property is not necessary as it would not contribute to my decision.

Reasons

3. The **main issue** is whether the Council's refusal to issue an LDC is well founded.
4. The appeal property is a two-storey semi-detached dwellinghouse with a rear two-storey outrigger. The proposed operational development is shown in detail on drawing numbers: 0051, 0052 and 0070, which provide locational, elevational and floor plan details. There is no dispute between the appeal parties that the proposed extension constitutes an alteration to the roof of the dwellinghouse.
5. The relevant part of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) is Schedule 2, Part 1, Class B – additions etc to the roof. The appeal property's use as a dwellinghouse was not granted by virtue of permitted development rights. No part of the proposal would exceed the highest part of the existing roof, nor would any part extend beyond the plane of any existing roof slope which forms

the principal elevation, fronting the highway. The proposed cubic content of the extension would be below 50 cubic metres. The proposal therefore complies with condition B.1.

6. The details shown on the proposed plans confirm that the materials to be used in the exterior works would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The proposal therefore complies with condition B.2 (a).
7. Condition B.2 (b) sets out how the enlargement of a roof shall be constructed. B.2 (b)(i)(aa) requires that the eaves of the original roof are maintained or reinstated, and B.2 (b)(ii) requires that no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse. However, condition B.2 includes exceptions, which are where the enlargement consists of a '*hip-to-gable enlargement*' and/or '*an enlargement which joins the original roof to the roof of a rear or side extension*'.
8. It is the Council's contention that the appeal property's existing rear two-storey outrigger was constructed as part of the original dwellinghouse. As such, they claim it is not a rear extension for the purposes of condition B.2 (b), therefore the exceptions specified do not apply to the proposed development. The Council has provided a copy of an appeal decision¹ where the Inspector is claimed to advocate this approach.
9. The appellant has not provided any evidence to show that the existing rear two-storey outrigger was not constructed as part of the original dwellinghouse. Given the symmetry between the appeal property and the adjoining dwellinghouse, I see no reason to doubt the Council's claim that the existing rear two-storey outrigger was built as part of the original dwellinghouse. I shall proceed on this basis.
10. It seems to me that the purpose of condition B.2 (b) is to prevent extensions and alterations to a roof which would overhang the eaves and project beyond an external wall of a dwellinghouse. The literal approach taken by the Council suggests that the proposed roof extension would be permitted development if the rear outrigger was non-original, even though the overall visual appearance and end result would be the same as now proposed.
11. It seems less than likely that the GPDO only intended to grant deemed planning permission for L-shaped dormers erected over non-original outriggers. The Permitted Development Rights for Householders Technical Guidance (the technical guidance) was produced to help homeowners understand how they can exercise their rights to carry out development while protecting the interests of their neighbours and the wider environment. The technical guidance is a material consideration of some importance. In respect of condition B.2 (b) it states:

*'The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back-addition' roof), **whether the part of the house being extended forms part of the original house or is an enlargement**, or the shape or level of the pitch of the roofs different in relation to each other.'* [my emphasis].

¹ APP/Q3630/X/19/3220537 – LDC for loft conversion incorporating a rear dormer with a further dormer on the outrigger. Two roof windows to the front elevation - dismissed 28 June 2019

In my view, this is a purposive approach to the interpretation in condition B.2 (b), encouraging a reader to consider an original outrigger and non-original outrigger in the same way.

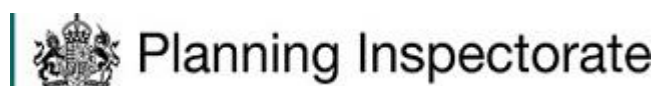
12. Inspector Dignan's decision confirms that *'The works to the outrigger, which would project some 1.5m above the existing shared rear ridge-line, would amount, in effect, to the erection of an additional storey of accommodation above the existing outrigger.'* Unlike the case before me, Inspector Dignan's case proposed works that fell to be considered under Class A as well as Class B. It was this combined extent of the proposal that was found to fall outside permitted development rights. Furthermore, Inspector Dignan acknowledges that the technical guidance envisages circumstances where an L-shaped dormer will meet the relevant requirements, although not in the case before him.
13. The proposed development consists of a proposed hip to gable extension incorporating rear L-shape dormer which would link two upper rear pitched roof planes of the original house that differ in terms of their shape and the level of their pitch. Having regard to the technical guidance, the exceptions in Condition B.2 (b) are applicable. There is therefore no need for the eaves of the original roof to be maintained or retained, and part of the enlargement can extend beyond the outside face of an external wall of the original dwellinghouse as shown in drawing numbers: 0051, 0052 and 0070. For these reasons, the proposed development would comply with condition B.2 (b).
14. There is also no dispute that the proposed works meet relevant criteria set out in Classes C and G of Part 1 of Schedule 2 of the GPDO, and I see no reason to disagree.

Conclusion

15. For the reasons given above I conclude, on the evidence now available that, the Council's refusal to grant a certificate of lawful development in respect of the proposed hip to gable extension incorporating rear L-shaped dormer and associated roof lights was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

M Madge

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 November 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in grey and hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development consists of a proposed hip to gable extension incorporating rear L-shape dormer, which falls within the exceptions set out in Condition B.2 (b). There is therefore no need for the eaves of the original roof to be maintained or retained, and part of the enlargement can extend beyond the outside face of any external wall of the original dwellinghouse. The proposed development therefore benefits from deemed planning permission granted by Article 3 and Classes B, C and G, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

M Madge

Inspector

Date: **[27 November 2024]**

Reference: APP/K3605/X/23/3316515

First Schedule

Proposed hip to gable extension incorporating rear L-shape dormer and associated roof lights.

Second Schedule

Land at 100 Portsmouth Road, Cobham, Surrey KT11 1HX

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **[27 November 2024]**

by M Madge

Land at: 100 Portsmouth Road, Cobham, Surrey KT11 1HX

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Scale: Not to Scale

