



Appeal Decision

Site visit made on 21 January 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 FEBRUARY 2025

Appeal Ref: APP/P5870/X/24/3340173

20B Wandle Road, Beddington CR0 4SD

- 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 J Thushyanthan against the decision of the Council of the London Borough of Sutton.
 - The application ref DM2023/01921, dated 21 December 2023, was refused by notice dated 28 February 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 the erection of a loft dormer conversion.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Lawful Development Certificate (LDC) seeks to establish whether the development of a rear flat roofed dormer and two roof lights on the front roof plane would have been lawful on the date of the application. The burden of proof is on the appellant, and it is necessary for them to demonstrate, on the balance of probability, that the development would have been lawful on the date the application was submitted to the Council. In this instance, the date of the application is the 21 December 2023.
3. The appellants have submitted existing and proposed elevation plans; floor plans; section plans as well as a site location plan. The proposed rooflights would be situated on the front roof plane and the proposed dormer would be on the rear. The proposed dormer would be finished in tiles to match the existing roof.
4. Matters such as planning policies and the effect of the proposed dormer and roof lights on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

6. An application under section 192(1)(b) of the 1990 Act seeks to establish whether any proposed operations to be carried out in, on, over or under land, would be

lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: a) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and b) They do not constitute a contravention of any enforcement notice then in force.

7. The appeal site is subject to planning history that is relevant to the determination of the LDC. The original application for the dwelling, which was part of a larger residential development, was granted on 26 October 1988 subject to conditions¹ (hereafter referred to as the 1988 permission). The relevant condition to the appeal is condition 2 of the 1988 permission, which states: -

2. Notwithstanding the provisions of the Town and Country Planning General Development Order 1977, as amended, planning permission shall be required in respect of development falling within Class I to the First Schedule to that order.'

8. For the avoidance of doubt, Article 3, Schedule 1, Class I of the Town and Country Planning General Development Order 1977 (1977 Order) refers to 'development within the curtilage of a dwellinghouse.' Class I of the 1977 Order sets out development, such as enlargement, improvement or other alteration of a dwellinghouse; the construction of porches; incidental buildings and hard standings, which is permitted by the 1977 Order subject to certain requirements. Furthermore, section 55 of the 1990 Act sets out the meaning of 'development', which includes 'the carrying out of building, engineering, mining or other operations in, on, over or under land.
9. With the above in mind, and based on the evidence before me, the loft dormer conversion and roof lights would amount to a building operation that constitutes 'development' for the purposes of Section 55(1) of the 1990 Act. Further to this, the proposed rear dormer and roof lights would be development that amounts to an enlargement, improvement and other alteration to the dwellinghouse within its curtilage. As such, in my judgement, the proposed development would be development limited by condition 2 of the 1988 permission.
10. I acknowledge that the condition does not explicitly state extensions to the roof, and the proposed dormer is compliant with the requirements set out in Article 3, Schedule 1, Part 1, Class B of the latest iteration of the Town and Country Planning (General Permitted Development (England) Order 2015, as amended (2015 GPDO). However, where permitted development rights have been removed, a planning application will be needed for development limited by that condition, whether or not it is compliant with the 1977 or 2015 Order. Furthermore, even though the condition does not specifically state extensions to the roof, the proposed development would still amount to an enlargement, improvement or other alteration of the dwellinghouse in its curtilage.
11. Consequently, enforcement action could be taken in respect of the proposed development as it would breach condition 2 of the 1988 permission. As such, it cannot be regarded as lawful as it would be contrary to the provisions set out in section 191 (2) (a) of the 1990 Act.

¹ Council reference LB21/N87/30324

Other Matters

12. The appellant has referred to a loft conversion on the neighbouring house at 20A Wandle Road, involving the insertion of rooflights, which was approved by the Council as part of an LDC application². However, I have not been provided with the full details of this case, and I cannot be certain that the Council had regard to the 1988 permission when determining the application. Nonetheless, my determination is made solely on matters of fact, planning law, and application of judicial authority. As such, the existence of this development does not alter my conclusions on this LDC appeal.

Conclusion

13. For the reasons given above, I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the loft dormer conversion that refusal would have been well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR

² Council reference DM2020/01839