



Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 17 February 2025

Appeal Ref: APP/X1165/W/24/3347770

Wheatridge Lodge, Wheatridge Lane, Torquay TQ2 6RA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 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 David Fusco against Torbay Council.
 - The application P/2024/0098 is dated 12 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 described as a new front porch and a rear flat roof dormer.
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Summary Decision: the appeal is allowed in part and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision in respect of the proposed front porch. In all other respects the appeal is dismissed.

Procedural matters

1. I am satisfied that the appeal can be determined on the papers that are before me, without a site visit. The issues involved relate solely to whether the proposed development accords with Class B and/or Class D, Part 1, Schedule 2 of the Town and Country (General Permitted Development)(England) Order 2015 (GPDO). Accordingly, I consider that in this case there would be no benefit to be gained from undertaking a site visit.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

3. There are two elements to this proposal: a new front porch and a rear flat roof dormer. It is convenient to consider the latter in the first instance.

Rear dormer

4. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted by the Class B, Part 1, Schedule 2, Article 3 of the GPDO, subject to the limitations in Class B1, Class B2, Class B3 and Class B4. The Council is satisfied that the rear dormer accords with Class B, other than in respect of Class B2(bb). I see no reason to take a different view subject, that is, to the materials used in any exterior work being of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, as stipulated by the limitation at Class B2(a).
5. The limitation at Class B2(bb) is that the edge of the enlargement of roof 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. The *Permitted development rights for householders: Technical Guidance* (Technical Guidance) published by the Ministry of Housing, Communities and Local Government in September 2019 explains that the measurement of 0.2 metres should be made along the original roof slope from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement. The Technical Guidance goes on to explain that any guttering that protrudes beyond the roof slope should not be included in this measurement.
6. The drawing submitted with the LDC application (Drawing No: 2412-A1) depicts the elevations of the property at a scale of 1:100, with a cross section (A-A) at a scale of 1:50. The difficulty is the scale to which the application drawings are drawn. This allows for a degree of imprecision and ambiguity when scaling up the drawings. The application drawings are not wholly dimensioned. Although of a larger scale, the cross-section drawing does not clearly depict where the edge of the tiles meets the guttering, and does not assist in this respect. In the absence of stated dimensions, I am not satisfied on the balance of probability that the dormer is entirely set back at least 0.2 metres from the eaves of the roof, such that it accords with the limitation at Class B2(bb).
7. I therefore concur with the Council that the appellant has not, on the balance of probability, shown that the rear dormer fully accords with Class B, Part 1, Schedule 2, Article 3 of the GPDO, such that is permitted by that Order.

Front porch

8. The erection or construction of a porch outside any external door of a dwellinghouse is permitted by Class D, Part 1, Schedule 2 of the GPDO, subject to the limitations at Class D1. The limitation at Class D1(b) is that the ground area (measured externally) of the structure should not exceed 3 square metres.
9. Based on the plan submitted with the LDC application, the Council calculates that the depth of the proposed porch would be some 1.32m. With the proposed width being 2.95m, this would in the Council's view give a total ground area for the porch of 3.89sqm. However, it is not clear from the Council's appeal statement to which point the depth of the front porch was measured.

10. Drawing No: 2412-A1 states a dimension of 1.07m measured from the front elevation of the porch to the front elevation of the main house. That would give a ground area (measured externally) of 2.996m², fractionally below the 3m maximum set out in the limitation at Class D1(b). I am content to rely upon the dimensions stated on Drawing No: 2412-A1 for present purposes. The proposed front porch would accord with the limitations in Class D1 in all other respects. I am therefore satisfied that, on the balance of probability, the proposed front porch would be permitted under Class D, Part 1, Schedule 2, Article 3 of the GPDO.

Conclusion

11. 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 rear dormer, 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.
12. However, 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 front porch, that refusal would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

13. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the proposed front porch which is found to be lawful.
14. The appeal is dismissed insofar as it relates to the proposed rear dormer.

Paul Freer
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 12 February 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 front porch is permitted by Class D, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Paul Freer
INSPECTOR

Date: 17 February 2025
Reference: APP/X1165/W/24/3347770

First Schedule

The erection of a front porch

Second Schedule

Land at Wheatridge Lodge, Wheatridge Lane, Torquay TQ2 6RA

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: 17 February 2025

by **Paul Freer BA (Hons) LLM PhD MRTPI**

Land at: Land at Wheatridge Lodge, Wheatridge Lane, Torquay TQ2 6RA

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Scale: Not to scale

