
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 12th August 2025

Appeal Ref: APP/U4610/X/24/3352299

32 Salisbury Avenue, Coventry CV3 5DB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Ruby Gill against the decision of Coventry City Council.
 - The application ref: PL/2024/0001281/LDCP, dated 5 July 2024, was refused by a notice dated 2 September 2024.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is '*loft conversion in line with permitted development rights and under 50m³ dormer and hip to gable extension and maintained under the ridge height Class B*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development, in the banner heading above is taken from the application form, noting that used by the Council in their decision notice. However, under section 192 of the 1990 Act there is no implied power to modify the description of the proposed development.
3. The purpose of an application made under section 192 of the 1990 Act is to find out whether the proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. 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.
4. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the main parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.

Main Issue

5. Whether the Council's decision to refuse to grant an LDC is well-founded. This requires consideration of whether the proposed works would constitute permitted development by virtue of Class B, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

6. Section 191(2) of the 1990 Act states that *'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then 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 of the requirements of any enforcement notice then in force.'* In this case there is no evidence before me to indicate that there were any requirements of an enforcement notice in force at the date of the LDC application.
7. The proposed works would involve the carrying out of building operations and would materially affect the external appearance of the building. The works would involve development and require planning permission. The appellant relies on permission being granted by article 3(1) of the GPDO by reason of the development being permitted by Class B (Class B) of Part 1 of Schedule 2 to the GPDO.
8. Class B sets out permitted development rights and accompanying limitations and conditions as they apply to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. There is no dispute that based on the side and rear elevations shown on the submitted drawing¹ the proposed rear dormer would meet the limitations at Class B.1 (a) through to (h) and the conditions at B.2 (b) and (c). I have no reason to disagree with these findings.
9. However, the loft floor plan on that drawing appears to indicate that the side walls/dormer cheeks would be constructed fully/partially over the side wall and party wall respectively of the dwelling and not appreciably inset from those walls as shown on the elevations. The appellant has stated that the timber frame construction would sit on top of the rafters and all external finishes would be added onto that construction.
10. Nonetheless, that is not what is depicted on the floor plan as the notation indicates a timber frame wall would be constructed partially over the party wall. I have based that finding on the fact that the wall construction shown utilises similar notation/symbols to the section of a timber framed wall that is illustrated on that drawing. The notation/symbols of the wall construction on the opposite side wall do not correspond to that of a timber framed wall but the notation appears to indicate that a new wall would be constructed over the existing side wall.
11. As such, there is ambiguity as to where the side walls/dormer cheeks would be constructed. I acknowledge that the design of the development cited in the appeal decision² referred to by the Council does not appear to be the same as that before me. Nevertheless, that Inspector's decision highlights that a proposed development may not fall squarely within the definition of a roof alteration under Class B. This is because a proposed development may not sit within the roof of the building, as it previously existed, where the walls of that building are being extended upwards. Consequently, in that scenario the development would not be treated as an addition to the roof but an extension to the building to form an additional storey.
12. The Government's Planning Practice Guidance emphasises that an application must contain sufficient and precise information, otherwise a certificate may be

¹ Drawing No: 1333-02 Rev B

² Ref No: APP/U4610/C/17/3176075

refused. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to understand exactly what is involved. Precision in the terms of a certificate is vital so there is no room for doubt. In this case there is doubt as to where the side walls/dormer cheeks would be constructed, and therefore I cannot be certain that the proposed development would fall squarely within Class B.

13. Moreover, the Council determined that the proposed materials would not comply with the condition at Class B.2(a) with regard to the materials used in any exterior work. The drawing indicates that composite cladding would be used on the walls/cheeks of the dormer but no colour or any other detail is specified for that cladding on the drawing. The appellant's appeal evidence indicates that the cladding is to be anthracite in colour and was chosen to match the colour of the neighbour's property. Yet, the condition at Class B.2(a) states that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and not a neighbouring property. Whilst, in principle the use of composite cladding may comply with the condition at Class B.2(a) in this case there is insufficient detail regarding the appearance of that cladding to determine whether it would comply with that condition. The imposition of planning conditions is only relevant to an application for planning permission.
14. I therefore find that the appellant has not demonstrated, with sufficient clarity and precision, that the proposal as shown on the submitted drawings would be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the GPDO and thus would have been lawful at the time of the application.

Other Matters

15. Two rooflights are shown on the front elevation on the submitted drawings. The Council does not dispute that they would be permitted development under Class C of Part 1 of Schedule 2 of the GPDO. However, the rooflights are designed to serve the converted loft space. They are not therefore separable building operations and are part and parcel of the proposed development to facilitate the loft conversion.
16. In support of the appeal, the appellant has referred to the dormer window on the adjoining property. However, I do not have the full details of this other scheme before me and, in any case, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed development would be lawful, regardless of how the Council may have determined other cases.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for *'loft conversion in line with permitted development rights and under 50m³ dormer and hip to gable extension and maintained under the ridge height Class B'* is 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.

D Boffin

INSPECTOR