



Appeal Decision

by John Braithwaite BSc(Arch) BA(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2026

Appeal Ref: APP/P3610/X/24/3357306

329 London Road, Ewell KT17 2DD

- 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 Leo Ho against the decision of Epsom and Ewell Borough Council.
 - The application ref 24/01264/CLE, dated 30 September 2024, was refused by notice dated 25 November 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which an LDC is sought is hip to gable loft conversion and dormer window.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires, mostly, an assessment of the proposed development against the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). The proposed development is shown on drawings submitted with the application. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. 329 London Road is a two-storey semi-detached dwelling. The attic has been converted to provide additional living accommodation. The building works included the alteration of the hipped roof form to a gable structure, and the addition of a dormer window on the rear roof slope. The Appellant maintains that building works were development permitted by the GPDO. The works fall to be considered under Class B of Part 1 of Schedule 2 of the GPDO which provides for the enlargement of a dwellinghouse consisting of an addition or alteration of its roof.
4. The permitted development right afforded by Class B is subject to conditions. The Council maintains that the development does not comply with condition B.2(a) and condition B.2(c)(ii). Condition B.2(a) requires the materials used in any exterior work must be of a similar appearance to those used in the construction of the existing dwellinghouse, and condition B.2(c)(ii) requires that any window inserted in a wall forming a side elevation of the dwellinghouse must be non-opening unless parts of the window which can be opened are more than 1.7 metres above internal floor level.
5. An LDC establishes what is or is not lawful on the date of the application; conditions cannot be imposed to require works to be carried out to redress any unlawfulness. If one element of the development is unlawful on the date of the application then the whole development is unlawful.

6. A window that was installed in the side elevation of the gable structure is openable. The Appellant accepts, by claiming that the window could be replaced, that it was in place on the date of the application. The lowest part of the opening window is less than 1.7 metres above internal floor level and the development does not therefore comply with condition B.2(c)(ii). The external wall of the gable structure and the side elevations of the dormer are clad in grey plastic horizontal boards, whereas the walls of the dwellinghouse are smooth white render. The materials used in exterior work are different to and not of similar appearance to those used in the construction of the dwellinghouse. The development does not therefore comply with condition B.2(a).

7. The cost of replacing unlawful materials and the variety of styles and materials of dwellings on London Road are not reasons to allow the appeal.

8. The works carried out do not comply with conditions B.2(a) and B.2(c)(ii) and the development is not therefore permitted under the provisions of Class B of Part 1 of Schedule 2 of the GPDO.

9. For the reasons given above, and on all evidence now available, the Council's refusal to grant an LDC for hip to gable loft conversion and dormer window at 329 London Road, Ewell was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector