
Appeal Decision

Site visit made on 22 April 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 28 April 2026

Appeal Ref: APP/G3110/X/24/3353585

34 Downside Road, Oxford, Oxfordshire OX3 8HP

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ermir Hidri against the decision of Oxford City Council.
 - The application Ref 24/01017/CPU, dated 29 April 2024, was refused by notice dated 2 July 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 a hip-to-gable loft conversion.
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Summary Decision: the appeal is dismissed

Procedural Matters

1. In the header above, I have taken the description of development for which a Certificate of Lawful Use or Development (LDC) is sought from the application form. It is however obvious from the appeal documentation that the description of development was amended during the lifespan of the application. I have therefore adopted the description of the development stated on the Council's formal Decision Notice, that being the proposed alterations to roof to form hip to gable, formation of 1no dormer to rear roofslope and insertion of 1no rooflight to front roofslope in association with loft conversion.
2. The application was initially made under section 192 of the Town and Country Planning Act 1990 (the 1990 Act) for a Certificate of Proposed Lawful Use or Development. However, the Council's Delegated Report dated 1 July 2024 notes that the proposed works subject to this application were (at the time the report was written) currently being constructed on site along with the development that was approved under a planning permission granted on appeal (Council ref: 23/00746/FUL).
3. There is no evidence before me as to when that work commenced (albeit it was noted by the Council as being in progress in July 2024) and I return to that matter in detail below. Nevertheless, the appeal was made against the refusal of a LDC application for proposed works under section 192 of the 1990 Act. The test under section 192 of the 1990 Act is whether the development proposed would have been lawful on the date on which the application was made. I am therefore content to determine this appeal on that basis rather

than against refusal of a LDC application for existing works under section 191 of that Act.

4. I carried out an unaccompanied site visit on 22 April 2026. Views of the dormer on the rear roofslope from the public highway are limited to oblique glimpses of the cheeks of the dormer and no view is possible of the rear elevation of the dormer. Nevertheless, it was apparent from my site visit that that the development for which the LDC is sought has now been substantially completed. I am therefore satisfied that I can determine this appeal on the written evidence that is before me and that no further site visit is necessary.
5. A letter of representation has been received from the occupier of a neighbouring property objecting to the proposal, in part, on the grounds of loss of privacy. However, the planning merits of the development are not relevant to this type of appeal and accordingly I am not able to take the comments made into account, albeit the photographs attached to that representation were very helpful to me in other respects.

Reasons

6. Section 192(2) of the 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 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.
7. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted by Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Class B.1 and the conditions at Class B.2. The Council is satisfied that in principle the appeal property retains the permitted development rights provided by the GPDO.
8. There is some disagreement about the cubic content of the enlargement of or addition to the roof that is proposed in the application. The Council states a figure of 23.32m³ for the dormer extension and 12.83m³ for the hip-to-gable conversion. The Council also include a figure for roof of the two-storey rear extension of 16.035m³.
9. The appellant cites a figure of 17.1m³ for the dormer extension and 7.6m³ for the hip-to-gable conversion. The appellant calculates the figure for the roof of the two-storey rear extension of 1.24m³. On that basis, the appellant arrives at a total volume for the proposed addition/alteration of the roof of 43.436m³. That is below the limitation of 50m³ set out in Class B1(d), Part 1, Schedule 2 of the GPDO, which states that the development is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case.

10. That is, however, entirely academic in this case. The Council asserts that the construction of the addition/alteration of the roof took place in conjunction with the development granted planning permission on appeal for, amongst other things, the erection of a single storey side extension and a two storey rear extension (Council Ref:23/00746/FUL; PINS Ref: APP/G3110/D/23/3330833). The appellant has made no meaningful attempt to refute the Council's assertion in that respect: indeed, in paragraphs 4.1.2 and 4.1.3 of his Final Comment appear to acknowledge that this was the case.
11. In paragraphs 4.1.3 of his Final Comments, the appellants states that:

the argument is that the appellant may remove the loft to complete the planning approved work and then rebuild it exactly as it is currently found on site. This will inevitably result in a significant waste of time, resources and disruption to the appellant and the neighbouring residents.
12. On my reading, that is a tacit acceptance that the development for which the LDC is sought was being constructed in parallel with the development permitted pursuant to planning permission 23/00746/FUL and was accordingly a single building operation. Moreover, neither has the appellant provided any evidence (for example, photographs or consents under the Building Regulations) to show that the development permitted pursuant to planning permission 23/00746/FUL was substantially complete before the works began on the addition/alteration of the roof.
13. The corollary is that, on the evidence available to me and on the balance of probability, the works on the two-storey rear extension and the addition/alteration of the roof were carried out as a single building operation. Two points flow from this.
14. Firstly, the planning permission granted on appeal was subject to conditions, one of which (Condition 2) required that the development thereby permitted shall be undertaken in accordance with the following approved plans and drawings. I have been provided with copies of the approved plans for that planning permission, which do not include the addition/alteration of the roof proposed in the LDC. It therefore follows that by constructing the works on the two-storey rear extension and the addition/alteration of the roof as a single building operation, the development permitted by planning permission 23/00746/FUL was not constructed in accordance with the approved drawings contrary to Condition 2 imposed on that permission.
15. The lawfulness or otherwise of the development constructed pursuant to planning permission 23/00746/FUL is not before me and accordingly I make no formal determination on that point. Nevertheless, the appellant has not shown through evidence that the development constructed pursuant to planning permission 23/00746/FUL was substantially completed in accordance with the terms of that permission and accordingly that the extensions to the host building constructed pursuant to that permission were lawful on the date that the LDC application was made.
16. Secondly, it is settled case law that a building must be substantially completed for permitted development rights to become available. For the reasons set out above, the evidence before me suggests that on the balance of probability that was not the case here. It inexorably follows that if planning permission 23/00746/FUL was not lawfully implemented, which on the balance of

probabilities appears to be the case, then those extensions (and therefore the building as a whole) were not lawful on the date that the LDC application was made.

17. Article 3(5)(a) of the GPDO states that permitted development rights do not apply to unlawful buildings. On that basis alone, for the reasons set out above it is more likely than not that the addition/alteration of the roof proposed in the LDC would not have been lawful on the date that the LDC application was made.
18. Finally, development for which the LDC is sought is shown on the plans that accompanied the application. These are based the development for which planning permission granted on appeal Council Ref:23/00746/FUL; PINS Ref: APP/G3110/D/23/3330833). These drawings are titled 'Planning Approved' (for example, Drawing No. ALU213 122 Rev F 'Proposed Garden Elevation') and show the building as approved to be extended by that permission. As such, the roof of the host property is shown on the application drawings as being a hipped roof. It follows that the LDC application was submitted on the basis that the development granted by planning permission 23/00746/FUL was substantially completed in accordance with the terms of that permission.
19. The evidence before me is that the development granted planning permission was not completed in accordance with that planning permission. It follows that on the date that the application was made the development sought by the LDC was not capable of being implemented in accordance with that application.
20. Accordingly, on the balance of probability, I conclude that the development proposed in the LDC application would not have been lawful on the date on which the application was made.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed alterations to roof to form hip to gable, formation of 1no dormer to rear roofslope and insertion of 1no rooflight to front roofslope in association with loft conversion at 34 Downside Road, Oxford, Oxfordshire OX3 8HP 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 as amended.

Formal Decision

22. The appeal is dismissed.

Paul Freer
INSPECTOR