



Appeal Decision

Site visit made on 8 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

Appeal Ref: APP/R5510/X/21/3270724

2 Divine Way, Hayes BB3 2FE

- 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 Varun Chadha against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 75929/APP/2020/3221, dated 6 October 2020, was refused by notice dated 14 December 2020.
 - 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 loft conversion with installation of velux rooflights.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether it has been shown that the proposal is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class C.

Reasons

3. It is for the appellant to show that an LDC should be issued in respect of the proposal, the relevant test of the evidence being on the balance of probability.
4. The appeal concerns a modern three storey mid-terrace dwelling, located on a planned residential estate. The drawings accompanying the application show two rooflights to be inserted in the front elevation roof slope, with two rooflights also being inserted in the rear elevation roof slope.
5. I am given to understand that the dwelling was erected pursuant to a grant of express planning permission in June 2010 for a large-scale residential development¹. Several conditions were attached to the permission, including condition 17 which states: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extension (including any extension to a roof including insertion of any skylight), any dwellinghouses nor any garages, sheds or other outbuildings shall be erected*

¹ Council Ref: 49996/APP/2009/2766.

without the grant of further specific permission from the Local Planning Authority”.

6. There was no evidence before me to suggest that the express planning permission referenced above was not implemented or that the dwelling was erected pursuant to a different permission. The planning permission granted by the GPDO at Article 3, Schedule 2, Part 1 Class C for alterations to the roof of a dwellinghouse is not absolute, being qualified by other statutory provisions. The effect of the GPDO at Article 3(4) is that planning permission is not granted by that legislation where the development would be contrary to a condition on a grant of express planning permission.
7. A previous version of the GPDO was in force at the time express planning permission for the dwelling was granted. However, the Courts have held that conditions removing permitted development rights under the GPDO have a continuing effect in respect of subsequent versions of that legislation². The effect of condition 17 is therefore to restrict the insertion of any skylight, unless express planning permission has been obtained. In practice, there is little difference between a skylight and a rooflight. The terms are interchangeable in relation to what is commonly understood as a window set in a roof or ceiling at the same angle. Accordingly, the proposal is clearly a type of development restricted by condition 17.
8. No grant of express planning permission for inserting the rooflights following the submission of a planning application was drawn to my attention. Consequently, the proposal would be contrary to condition 17 and it cannot be permitted by the GPDO at Article 3, Schedule 2, Part 1, Class C, even if the limitations and conditions at paragraphs C.1 and C.2 of that Class would otherwise be met.
9. I appreciate that an LDC was issued under s192 of the Act for a similar proposal at a nearby residential property, in June 2017³. However, an LDC in respect of proposed development is not the equivalent, in law, of a planning permission. It is clear that condition 17 restricts more than the erection of residential extensions and outbuildings. It would be wrong to grant an LDC where the available evidence shows that the proposal is not lawful.
10. Therefore, on the balance of probability the appellant has not shown that the proposal is lawful for planning purposes; the available evidence shows otherwise.

Conclusion

11. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the proposal was 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.

Stephen Hawkins

INSPECTOR

² *R v Tunbridge Wells BC ex parte Blue Boys Developments Ltd* [1990] 1 PLR 55; [1990] JPL 495.

³ Council Ref: 72697/APP/2017/222.