
Appeal Decision

Accompanied site visit made on 26 July 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 8 September 2016

Appeal ref: APP/L5810/X/16/3141906
21 Windsor Road, Richmond, TW9 2EJ

- 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 lawful development certificate (LDC) by Richmond Upon Thames London Borough Council.
- The appeal is made by Mr Benoit Lepage.
- The application Ref 15/4132/PS192 dated 25 September 2015 was refused by notice dated 20 November 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a lawful development certificate is sought is described in the application as “proposed rear addition loft conversion”.

Summary of decision: The appeal is allowed and a LDC is granted.

Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The onus of proof in an application for a LDC rests with the appellant, the relevant test of the evidence being the balance of probability.

Main Issue

3. I consider that the main issue is whether the Council’s decision to refuse to grant a LDC was well-founded.

Discussion

4. The LDC appeal relates to the proposed erection of a roof extension over the existing two storey outrigger to the existing dwellinghouse. The Council accept that the scheme, if viewed in isolation, would constitute permitted development: however, the main roof of the dwelling was extended in 2003 after the grant of a LDC in that year, and the Council consider that the current scheme and the existing roof extension needed to be considered as a whole.

Thus, because the original extension did not meet the criteria contained in the Town and Country Planning (General Permitted Development)(England) Order 2015, specifically Schedule 2, Part 1, Class B.2(b)(i)(bb), the application was refused.

5. There is thus no dispute that the roof extension built in 2003 was permitted development under the legislation then in force. However, that extension did not have the 20 cm setback from the edge of the roof eaves that is required under the current provisions. The proposal subject of the current LDC application does have the required setback but, because the Council contend that the roof extensions need to be considered as a whole, they have refused the application.
6. The Council's argument could have force if there was evidence that the two roof extensions had in fact been conceived as a whole, but given the gap of 13 years between the two schemes that seems highly unlikely. The facts point to one development having been undertaken and substantially completed in 2003 and to a second, separate, scheme now being proposed. That second scheme should be assessed as such and whilst, for the purposes of the volume allowance, the current GPDO makes reference to the resulting roof space taking into account any enlargement to the original roofspace, I cannot find anything to justify the Council's argument regarding the setback on the original roof alteration. In those circumstances I do not feel that the Council's argument is tenable and, as the Council accept that the scheme would otherwise constitute permitted development, a view with which I concur, the appeal will be allowed and a LDC granted.

Conclusions

7. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate in respect of a proposed rear addition loft conversion at 21 Windsor Road, Richmond, TW9 2EJ was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal decision

8. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of the proposed operations which are considered to be lawful.

Felix Bourne

Felix Bourne

INSPECTOR



Lawful Development Certificate

APPEAL REFERENCE APP/L5810/X/16/3141906
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 25 September 2015 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason: The proposed development constituted development permitted by Article 3 and Class B within Part 1 to Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015.

Felix Bourne

Felix Bourne

INSPECTOR

Date : **8 September 2016**

First Schedule

Proposed rear addition loft conversion, in accordance with the submitted plans, E001 rev B, E002 rev B, S005 rev B, P003 rev B, P004 rev B and P006 rev B received by the Council on 25 September 2015.

Second Schedule

Land at 21 Windsor Road, Richmond, TW9 2EJ.

NOTES

1. This certificate is issued solely for the purpose of section 191 or 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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 operation is only conclusively presumed where there has been no material change, before the operations are begun, in any of the matters which were relevant to the decision about lawfulness.