

Appeal Decision

Site visit made on 25 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 1 November 2016

Appeal Ref: APP/H5390/X/16/3145598

45 Gastein Road, London W6 8LT

- 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 Sanjeev Verma against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2015/05875/CLP dated 14 December 2015 was refused by notice dated 10 February 2016
 - 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 the erection of a rear extension at second floor level, on top of the existing back addition.
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Decision

1. The appeal is allowed and I attach to this decision a Certificate of Lawful Development (LDC) indicating that, at the time of the application, the erection of a rear extension at second floor level, on top of the existing back addition at 45 Gastein Road, London W6 8LT would have been lawful.

Application for Costs

2. An application for a full award of costs has been made by Mr Sanjeev Verma against the London Borough of Hammersmith and Fulham. This is the subject of a separate decision.

Background information, the LDC application and the planning history

3. The appeal building is a single family, mid-terraced, two-storey dwelling house located on the northern side of Gastein Road. It does not lie within a conservation area and there are no Article 4 directions in place. A single storey rear extension to the side of the existing back addition was approved under application reference 2015/05572/PD42. At the time of my site visit various works were being carried out at the property including the roofing works subject to the Certificate of Lawful Use or Development (LDC) application.

4. An appeal relating to a LDC is confined to the narrow remit of reviewing the local planning authority's reason for refusal and then deciding whether or not the reasons are well founded. The planning merits of the case do not fall to be considered. In relation to this LDC appeal what needs to be assessed is whether or not, at the time of the application (14 December 2015), the proposal would have been lawful.

5. The application for the LDC was made on 14 December 2015 and was for the 'erection of a rear extension at second floor level, on top of the existing back addition'. The submitted drawings (1534/01-1; 1534/01-2; 1534/03-0; 1534/03-1 and 1534/03-2) indicated that the cubic content of the extension was 39.7m³.

6. The application was refused on 10 February 2016 on the basis that the proposal did not constitute development permitted by virtue of Class B, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The reason for refusal referred specifically to Class B.1 (d) (i) and that because of a separate planning permission granted by the Council, the proposal would breach the 40m³ figure relating to the resulting roof space.

7. On 10 February 2016 the Local Planning Authority (LPA) had granted planning permission (2015/05871/FUL) for development including a rear roof extension to the main roof incorporating a 70° rear pitch and three dormer windows. The Council considered that this approval was a material consideration relating to the LDC application considering that the appellant could *'reasonably extend the main roof slope at any date up to 9 March 2019'*. Officers calculated the volume of the above approved rear roof extension to be 17.57m³ and that this, taken together with the 39.7m³ of the LDC application would exceed the permitted development figure of 40m³. The Council concluded, therefore that the LDC application should be refused.

Assessment

8. Having considered all of the submissions, the various applications, permissions and drawings, I do not consider that the Council's decision to refuse to issue a LDC was sound. As indicated above the merits of a case cannot be taken into account in deciding whether or not a proposed development is or is not lawful.

9. The only matter to be considered is whether or not the development proposed and applied for on 14 December 2015 was lawful at that time. Section 191(2) of the Act states that *'if on an application under this 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 they shall refuse the application'*. There is no scope for an authority to introduce other material considerations such as a future approval for a separate planning application.

10. At the application date no enforcement action could have been taken if the operations the subject of the application had been carried out. There is nothing before me to suggest that what is shown on the above application drawings is not permitted development under any part of the GPDO. The Council appears to accept the figure of 39.7m³ as being the additional volume to the roof of the property and that this meets the condition at B.1 (d) (i) of the GPDO. The other GPDO conditions all appear have been accepted by the Council. I have no reason to disagree. As the Council indicates the onus in any LDC application lies with the applicant. In my view, the information submitted to the LPA on 14 December 2015 should have satisfied it that the operations described in the application were lawful on that date.

11. That a planning application (2015/05871/FUL) was granted one month after the LDC application was refused and almost 2 months after the LDC application was made, cannot alter the fact that on 14 December 2015 the proposed operational development was lawful.

12. Thus, there was no valid reason not to have granted a LDC for the proposed development. The Council should have issued a LDC. This would have then been a material consideration in considering whether or not to grant a conditional approval for the other proposed works. However, the approval granted could not have been material to whether or not what was proposed at the time was lawful or not. In any case, had the Council granted an LDC for what was applied, for these works (shown

on the application drawings) are different to what was then approved on 10 February 2016. I conclude that the appeal should succeed and a LDC will be issued.

Other Matters

13. In reaching my decision I have taken into account all of the other matters raised by the Council and by interested persons. With regard to the latter I have noted their concerns about the effect of the works at No 45 on their living conditions; the party wall situation; the effect of the permitted works on the character and appearance of the area and the question of overlooking.

14. However, I can only deal with the LDC appeal and in particular whether or not what was applied for in the LDC application was lawful on 14 December 2015. As indicated above the merits of the development cannot be considered and I am not empowered to deal with any other application(s) that have been granted approval by the LPA. If anyone has a grievance relating to these other works then it is a matter for them to take up with the Council.

15. There are no other matters relating to this case that would outweigh the points that have led to my conclusions and nor is any other factor of such significance so as to change my decision that a LDC should be issued for the works set out above and as applied for on 154 December 2015.

Anthony J Wharton

Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 14 December 2015 the development described in the First Schedule hereto in respect of the land/property specified in the Second Schedule hereto, was lawful within the meaning of section 192 (2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development constitutes permitted development under Class B, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Signed

Anthony J Wharton
Inspector

Date: **1 November 2016**
Appeal Reference: APP/H5390/X/16/3145598

First Schedule

Erection of a rear extension at second floor level on top of the existing back addition in accordance with drawing Nos: 1534/01-1; 1534/01-2; 1534/03-0; 1534/03-1 and 1534/03-2.

Second Schedule

45 Gastein Road, London W6 8LT

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the side extension only.

It certifies that the proposed development described in the First Schedule on the land specified in the Second Schedule was lawful, on the certified dates and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on those dates.

This certificate applies only to the extent of development described in the First Schedule and to the land/property specified in the Second Schedule. 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.