
Appeal Decision

Site visit made on 10 October 2016

by B M Campbell BA(Hons) MRTPI

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

Decision date: 4 November 2016

Appeal Ref: APP/G5750/X/16/3152596
26 Manbey Street, London E15 1EU

- 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 L Rahman against the decision of the Council of the London Borough of Newham.
 - The application Ref 16/00340/CLP, dated 5 February 2016, was refused by notice dated 6 April 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 a loft conversion.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Preliminary matters

2. No representative from the Council attended the site visit. The Appellant granted access so that I could view the rear of the property unaccompanied. No discussion as to the merits of the appeal took place.

Reasons

3. There is no dispute that the proposed works comprise development requiring planning permission. The Appellant, however, argues that the scheme benefits from the permission granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for certain classes of development described as permitted development in Schedule 2 so that an application for express planning permission is not necessary. The Council disagrees.
4. The proposed loft conversion involves the erection of an L shaped extension projecting across the rear roof slope of the house and extending along the roof of the two storey rear outrigger. Class B of Part 1 of Schedule 2 addresses the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Development is permitted by this class provided a number of limitations are met and subject to compliance with a number of conditions.

5. The Council assessed the proposal loft conversion against those limitations and conditions and considered that it complied with all other than Condition B.2(b)(i)(aa). B.2(b) says:

The enlargement must be constructed so that –

- (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension –*
 - (aa) the eaves of the original roof are maintained or reinstated; and*
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as is practicable, not less than 0.2m from the eaves, measured along the roof slope from the outside edge of the eaves; and*
- (ii) other than in a case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse*

For the reason of the eaves of the original house not being maintained or reinstated, the Council refused to issue an LDC and in so doing made reference to an appeal decision supporting its stance.

6. The eaves of the original two-storey outrigger are at a lower level than the eaves of the main rear roof so that at the point where the extension over the main roof meets that extending over the outrigger (the inside corner of the L shape) a section of the original eaves of the main rear roof would be removed. That being the case that section of the eaves on the main roof would not be maintained or reinstated as required by (aa) of B.2(b)(i). Neither would that part of the extension be “not less than 0.2m from the eaves” as required by (bb). Further, with regard to B.2(b)(ii), the extension over the rear outrigger would extend beyond the outside face of the rear main wall of the original dwellinghouse.

However, B.2(b) provides for exceptions to these rules. Requirement (i)(aa) does not apply *in the case an enlargement which joins the original roof to the roof of a rear or side extension*. That is the situation here – (i)(aa) does not apply. Requirement (i)(bb) only applies *as far as is practicable*. It is clearly not practicable in this situation to keep 0.2m above the eaves where the two parts of the extension meet. Finally, as with (i)(aa), requirement (ii) does not apply *in a case of an enlargement which joins the original roof to the roof of a rear or side extension*.

7. Thus the proposed development does not breach any of the requirements set out in B.2(b). That interpretation is supported by advice given by DCLG in Permitted Development rights for Householders Technical Guidance April 2016 which explains the rules on permitted development and how they should be applied in particular sets of circumstances. Page 36 says:

*This 0.2m set back will be required unless it can be demonstrated that this is not possible due to practical or structural considerations. One circumstance where **it will not prove practical to maintain this 0.2m distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house.***

*The enlarged part of the roof **must not extend beyond the outer face of any wall** of the original house if it is to qualify as permitted development,*

unless it joins the original roof to the roof of a rear or side extension.

An interpretative provision at paragraph B.4 of Class B clarifies that for these purposes any roof tiles, guttering, fascias, barge boards or other minor roof details which overhang the outer face of the wall should not to be considered part of the roof enlargement.

The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other. (my emphasis)

8. In the appeal decision relied on by the Council (APP/G5750/X/15/3135806) the Inspector, in considering compliance or otherwise with B.2(b)(i)(aa), does not explain why the exception in B.2(b)(i) did not apply in that case – that is: *other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension*. I consider it does apply in this case. In addition, he makes no reference to the DCLG's Technical Guidance although I note that the current version from which I have quoted was not in force at that time.
9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion at 26 Manbey Street, London E15 1EU was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 February 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The loft conversion comprises development within the meaning of s55 of the Act for which planning permission is required. Permission is granted by way of Article 3(1) and Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Signed

B M Campbell

Inspector

Date 4 November 2016

Reference: APP/G5750/X/16/3152596

First Schedule

Loft conversion as shown on drawing nos. 01, 02, 03, 04, 05 & 06

Second Schedule

Land at 26 Manbey Street, London E15 1EU

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /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, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

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 use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by B M Campbell BA(Hons) MRTPI

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Not to Scale

