The Planning Inspectorate

Appeal Decision

Site visit made on 14 November 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 23 November 2016

Appeal Ref : APP/T5720/X/16/3148524
Land at 135 Clarence Road, London, SW19 8QB.

- 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 M. Hoffman against the decision of the Council of the London Borough of Merton.
- The application ref 15/P3424 was dated 4 September 2015.
- The application was made under section 191(1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is a rear dormer extension.

Summary of Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out in the Formal Decision.

Preliminary Matters

1. The Council's representative did not attend the scheduled accompanied site visit. The Appellant provided me with access to the site and I undertook an unaccompanied site visit.

2. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on 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.

Reasons

4. Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 (as amended)(the GPDO) sets out permitted development rights and accompanying limitations and conditions as they apply to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B includes a condition at B.2

(a) that the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

5. The appeal property is two storey mid terraced house. The vertical face and sides of the rear dormer are coated in white render. The ground and first floor walls of the rear of the dwellinghouse are also white rendered. The Appellant says that this was the case before the construction of the dormer and this is not questioned by the Council. The main roof of the house is tile.

6. Condition B.2 (a) does not require an exact match but refers to 'similar appearance' and it refers to the dwellinghouse rather than the roof specifically. This suggests that visibility and the effect on the overall appearance are key considerations. In this case the dormer is not readily visible from public viewpoints and other dormers in the locality are constructed from various materials. I find that the materials used are sympathetic to the existing house and achieve visual compatibility with the predominant external finish of the rear elevation of the host dwelling. The roof addition accords visually with the dwelling and white render does not appear at odds with the appearance of the main roof as the rear elevation is not visible from the streetscene.

7. The Department for Communities and Local Government has published Technical Guidance on permitted development for householders (the Technical Guidance). The Technical Guidance does not have the force of law, nor does it replace the GPDO but it does contain useful explanatory advice on the application and interpretation of condition B.2 (a). The Guidance states that the visual impacts of the materials used will be the most important consideration. I have taken into account that it states that 'the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level'. But this is not determinative and is cited as an example of achieving a similar visual appearance to the existing house. The example is not prescriptive and does not override the approach of the Technical Guidance which is to focus on visual impact.

8. My attention is drawn to other appeal decisions. I do not know the particular circumstances of other decisions and have determined this appeal on its particular facts.

9. I conclude that the development satisfies condition B.2 (a) and there is no dispute between the parties that all other conditions and limitations of Class B are satisfied and I have no reason to conclude otherwise. The development is therefore permitted development and does not require planning permission.

10. Accordingly, for the reasons given above, I conclude on the evidence now available that the Council's refusal to grant a LDC in respect of the rear dormer extension was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

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

S.Prail

Inspector

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/T5720/X/16/3148524
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 the 4 September 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in red on the plan attached to this certificate would have been lawful within the meaning of section 191(1) (b) of the Town and Country Planning Act 1990 as amended, for the following reason:

The development described in the First Schedule would be permitted development by virtue of Article 3 and Class B within Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

S.Prail

INSPECTOR

Date: **23 November 2016**

First Schedule
Rear dormer extension as shown on site location plan, drawings 907/02 (C) and 07(C) submitted with the application reference 15/P3424 dated 4 September 2015.

Second Schedule
135 Clarence Road, London, SW19 8QB.

NOTES

1. This certificate is issued solely for the purpose of section 191 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 use or operation or matter 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 191(6) which states that the lawfulness of any use, operations or other matter for which a certificate is in force under that section shall be conclusively presumed.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: **23 November 2016**

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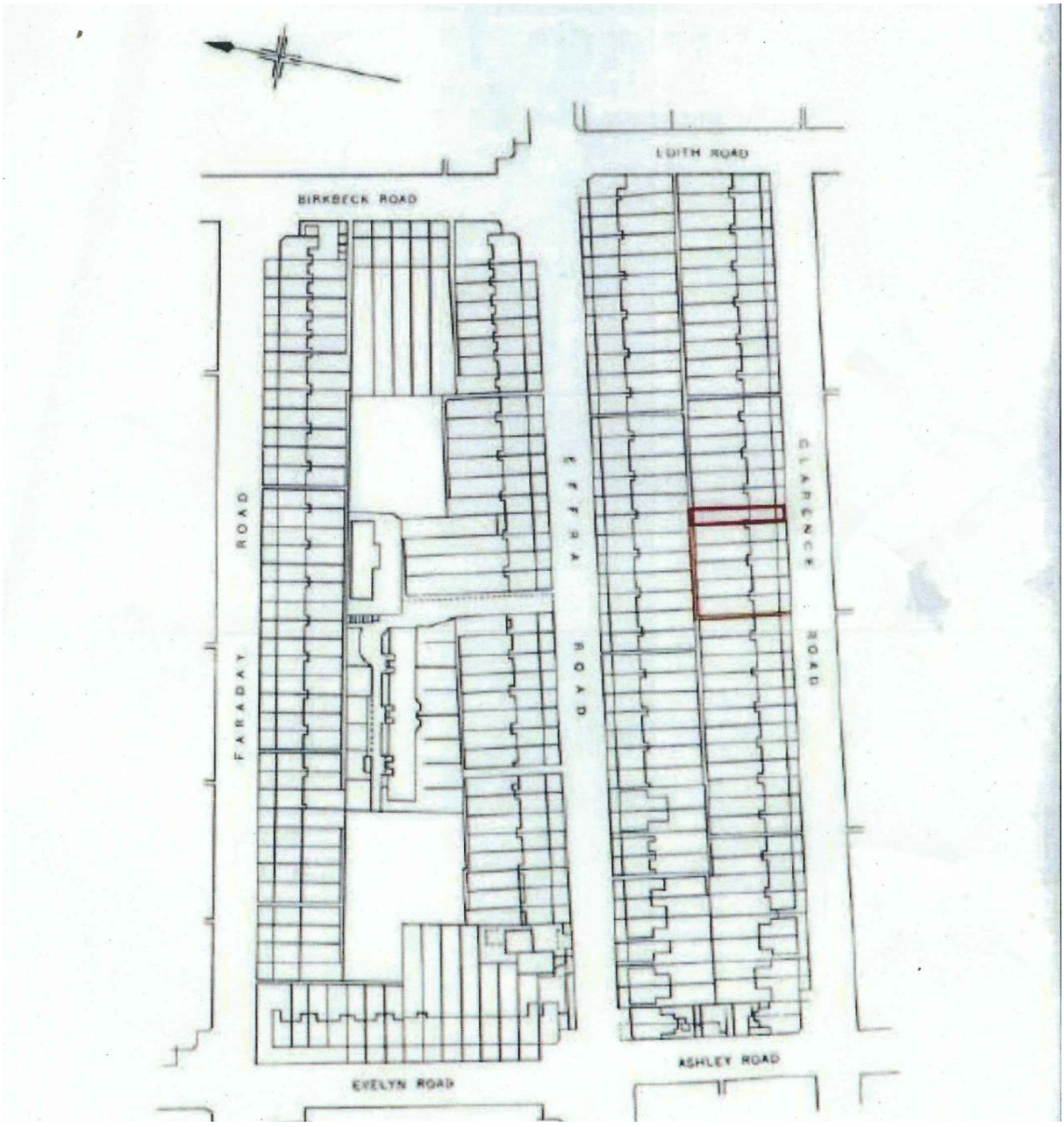
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