
Appeal Decision

Site visit made on 24 January 2017

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 2 February 2017

Appeal Ref: APP/G5750/X/16/3155523

120 Chestnut Avenue, Forest Gate, London, E7 0JJ

- 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 Jamie Ratcliff against the decision of the Council of the London Borough of Newham.
- The application Ref. 16/01345/CLP, dated 27 April 2016, was refused by notice dated 30 June 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 LDC is sought is "Creating new dormer over rear closet wing" and "insertion of a new roof light and glass door to existing single storey extension".

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Decision.

Procedural matters

1. It was apparent at the site visit that the dormer extension referred to in the application has now been built. However I do not consider it is necessary to amend the application to refer to existing development (which would come under the terms s191 of the Act) as I understand that at the time the application was submitted it was "proposed" and therefore factually correct. Should I decide to allow the appeal and issue a LDC for this development it would still have the effect of rendering what has been built as lawful development.
2. In terms of the nature of the development that is before me for consideration, the description I have set out in the bullet point above is that stated on the application form which to me seems clear and consistent with the plans and the appellant's submissions. The Council have chosen a different form of wording but it is not clear why and their description fails to include the other elements for which a certificate is sought namely the insertion of a new roof light and glass door to existing single storey extension. The Council have provided no statement only a copy of a brief "delegated" officer report which makes no mention of these other proposed works. They have also not indicated that a split decision was reached with a certificate being issued for these other works. In these circumstances it is essential that they are described as part of the proposed development as their exclusion would mean that there will have been a failure to reach a decision on their lawfulness or otherwise.

Reasons

3. In appeals of this nature matters of merit are irrelevant and the only issue to consider is whether the development proposed is lawful having regard to the relevant planning legislation. The onus is upon the appellant to demonstrate that this is the case and if a local planning authority produces no evidence of its own to undermine the evidence of an appellant then there is no good reason to refuse the application or not allow the appeal.
4. In this instance the Council have produced very little of substance to back up their decision. From the actual reason for refusal set out on the decision notice I take it – and this is the way the appellant has addressed the matter in submissions – that the only matter in dispute is the claim that the dormer extension as now built does not consist of an alteration or addition to the roof of the property because it is built on a party wall. No explanation or amplification of why this conclusion is reached has been provided by the Council. I am therefore left to decide the matter based on the legal framework applying and the appellant's submissions, which include reference to some other appeal decisions for roof additions to other properties.
5. It is common ground that the relevant Statutory Instrument to consider is The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council are silent on the insertion of a new roof light and glass door to the existing single storey extension but I consider such development would come within the terms of Class A of Part 1 of Schedule 2 of the GPDO and accordingly be "permitted development" and hence lawful.
6. Turning to the dormer, such development falls to be considered under the terms and conditions of Class B of Part 1 of Schedule 2 of the GPDO. From what is before me there is nothing which indicates that these are not satisfied other than the argument concerning the party wall. I will come back to this below but will briefly comment on other aspects of Class B to which the appellant has referred for completeness sake. He has provided details of the volume of both the "proposed" extension (now built) and another previous roof extension to the main house which he states have a combined total of 39.94 cu.m. This is just below the stated limit in Class B of 40 cu.m. The Council have not contested this calculation and I therefore have no reason to disagree with the appellant's assertion.
7. The dormer is also shown on the plans as being constructed with a setback of 0.2m from the eaves of the roof below and this would accord with Condition B.2(b)(i)(bb) of Class B. From my observations at the site visit this would appear to be the case in terms of what has been built. The facing materials (synthetic slates) are also of similar appearance to the material cladding the main roof of the property.
8. The appellant claims that the terms of Condition B.2(b)(i)(aa) do not need to be met – namely that the eaves of the original roof are maintained or reinstated – because one of the exceptions applies – that is the dormer joins the original roof to the roof of a rear extension. In this respect he accepts that parts of the eaves to the main roof of the house were removed in order to butt the new dormer up to the face of the earlier one. His argument in this respect, based on a map of Chestnut Avenue he has obtained dated 1893, is that the original house was rectangular in form without what can be described as the "outrigger" that now exists on top of which the new dormer has been

constructed. However, by virtue of the definition of the word “original” set out in Article 1 of the GPDO, this includes a building as it existed on 1 July 1948 and that would include any earlier extension existing at that time.

9. I have no evidence to show that the outrigger in this case was built after that date and from my observations on site of the age of the brickwork it may well have been built before. If this were the case it would constitute part of the original building as so defined and that could mean that the dormer does not benefit from the exception. However, as this matter has not been raised by the Council and in the absence of clear factual details on the dates of construction of the various parts of the property, I am inclined to accept the appellant’s position.
10. In terms of the argument that the Council do rely on I come to the matter of whether the development is “within the curtilage of the dwellinghouse”. In this respect the appellant has drawn my attention to a number of appeal decisions¹ where it was concluded that a party wall is a shared structure and that two adjoining curtilages can overlap. The reasoning relied on in these earlier appeal decisions had regard to several decided court authorities which examined the meaning of the word “curtilage”. One defining characteristic identified was that it should be regarded as part of one enclosure of a house and another that it should be intimately associated with that building. As other Inspectors in these decisions have pointed out without a party wall a building would be likely to collapse. I have no court authority which goes precisely to the matter of dormer windows built up to or on part walls but as the appeal decisions before me have not been challenged they are good authority at present for a finding that building on a party wall can be classed as an addition to a roof. No counter decision or judgment to question this position has been cited or supplied.
11. I would also add that the whole of roof extension appears to come within the land ownership of the property in question. The plans supplied clearly show the extension within the red dotted line which is annotated to show what is claimed to be the appeal property. This passes down the middle of the party wall and I observed from an upper window that what has been constructed does not project further than this midpoint and hence does not appear to encroach onto the neighbour’s property (No.118).
12. Based on this analysis and what is before me I conclude that the dormer extension is an alteration to the roof within the curtilage of the appeal property. Consequently, having regard to this finding and the others above I conclude that it is permitted development and lawful by virtue of the terms of Class B of Part 1 of Schedule 2 of the GPDO.
13. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a LDC in respect of creating a new dormer extension over the rear closet wing and the insertion of a new roof light and glass door to existing single storey extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

¹ APP/N5090/X/09/2108111, APP/Q5300/X/01/1062324 & APP/G2245/X/14/3000970

Decision

14. The appeal is allowed and attached to this decision below is a LDC describing the proposed operation which is considered to be lawful.

N P Freeman

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 27 April 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged with a dotted red line on Plan A 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 development described within the First Schedule would be permitted development by virtue of the provisions of Article (3(1) and Classes A and B of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

N P Freeman
Inspector

Date: **2 February 2017**

Reference: APP/G5750/X/16/3155523

First Schedule:

Creating a new dormer extension over rear closet wing and the insertion of a new roof light and glass door to existing single storey extension.

Second Schedule:

Land at 120 Chestnut Avenue, Forest Gate, London, E7 0JJ

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 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 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 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.

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 A

This is the plan referred to in the Lawful Development Certificate dated: **2 February 2017**

by Mr N P Freeman BA(Hons), DipTP, MRTPI, DMS.

Land at: 120 Chestnut Avenue, Forest Gate, London, E7 0JJ.

Reference: APP/G5750/X/16/3155523

Not to scale:



N P Freeman
INSPECTOR