
Appeal Decision

Site visit made on 15 February 2017

by Simon N Hand MA

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

Decision date: 24 February 2017

Appeal Ref: APP/N5660/X/16/3160838
Flat B, 33 Edgeley Road, London, SW4 6ES

- 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 Ms Gwen Bondi against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/03964/LDCE, dated 3 July 2016, was refused by notice dated 31 August 2016.
 - The application was made under section 191(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 roof terrace to rear of Flat B.
-

Decision

1. The appeal is dismissed.

Reasons

2. The objective of the application is to regularise the use of a flat roof over an extension to a ground floor flat as a roof terrace for the first floor flat (Flat B) at 33 Edgeley Road.
3. The first point to make clear is that the use of the flat roof is not development as long as that use is incidental or ancillary to the residential use of the building as a whole. This is so whether the building is a single dwellinghouse or has been split into flats, as in this case. The activities as described, for sitting out, reading the paper and occasional dinner parties are incidental to the main residential use of the flats and so there has been no material change of use and no planning permission is required.
4. Planning permission may be required for the physical works that have occurred in order to facilitate the use of the flat roof as a terrace. These works are, according to the appellant, the strengthening of the roof of the ground floor extension, the insertion of a roof light that was strong enough to walk on, the provision of a parapet around the edge of the roof and the insertion of a French window into the rear of Flat B to enable access to the terrace. This French window replaced a sash window.
5. In order to qualify as development, works have to meet the definition of s55 of the 1990 Act. S55(2) excludes certain works from the definition of development, including at S55(2)(a)(ii) works that "do not materially affect the

external appearance of the building". Photographs provided by the owner of the ground floor flat show the strengthening works were simply larger beams in the ceiling and so in my view these works do not in this case affect the external appearance of the building.

6. There is no evidence the walk-on rooflight would be any difference in appearance than a standard roof-light and it does not seem to me this would have "materially affected" the external appearance of the building. However, on my site visit I saw the rooflight actually appeared to be made of normal glass and was housed in a raised collar. This protrudes above the roof of the extension and it could be argued it materially affects the appearance of the building. However, as a non-walkable rooflight it has no bearing on the creation of a roof terrace and so is irrelevant as far as the lawful development certificate is concerned.
7. The parapet around the edge of the extension is very low, about 20-30cm in height. It appeared to be simply a way of finishing off the flat roofed extension. I assume it was part of building works for the extension and the Council have not suggested otherwise. I have no plans showing the approved external elevations of the extension so there is no evidence that it was not granted planning permission by the 2008 permission (08/04713/FUL). But in any event it certainly could not be said to facilitate the use of the roof as a terrace as it is too low.
8. The French window is actually a normal sized window that opens outwards rather than upwards as a sash window would. There would appear to have been no change to the size of the opening, and occupiers of Flat B have to climb out of the window using a small step ladder to access the roof terrace. It is possible that the change from sash windows to more modern casement windows could have a material effect on a building, but in this case the alteration of a single window has only a minimal effect on the external appearance of the building and so is not material.

Conclusions

9. As a result of my considerations above I do not consider there has been either a material change of use or any works comprising development that would enable the use of the roof as a terrace and I shall not issue a lawful development certificate. However, as long as there are no actual works that materially affect the external appearance of the building and the use remains incidental, as it would appear to be at the moment, then planning permission is not required for the matters described in the application for the lawful development certificate.

Simon Hand

Inspector