The Planning Inspectorate

# Appeal Decision

Site visit made on 21 February 2017

**by Diane Fleming BA (Hons) MRTPI**

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

**Decision date: 20 March 2017**

**Appeal Ref: APP/G5750/X/16/3159115**
**46 Gooseley Lane, London E6 6AP**

- 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 Mrs Maria Ostaszewska against the decision of the Council of the London Borough of Newham.
- The application Ref 16/00604/CLP, dated 15 February 2016, was refused by notice dated 7 July 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 described as 'Roof extension and loft conversion and porch'.

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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. In any other case they shall refuse the application.

3. There are three elements to the appellant's proposal. Applying the terms of Section 192(2) of the 1990 Act to the roof extension proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

4. The Council also assessed the proposed roof lights to be inserted into the front roof slope and the erection of a porch enclosing the front door against the requirements of the relevant parts of the GPDO. They found that each of these proposals complied with the listed criteria and were therefore permitted development (PD). I have therefore confined my decision to the consideration of the proposed roof extension. For the avoidance of doubt I would also point out that an LDC under section 192 is not the equivalent, in law, of a planning permission and therefore the issue of planning merits is not relevant to this appeal.

## Reasons

5. The appeal relates to a mid-terrace, two storey house which has a small garden at the rear. The appellant proposes to build a roof extension in the form of a rear dormer which will be less than 40 cubic metres in volume and will extend from just below the main ridge of the roof to within 200mm of the eaves. It will also extend from the firewall on one side of the roof to the firewall on the other side. The Council advise that the site does not lie within a conservation area and there are no Article 4 Directions removing PD rights.

6. The principle point at issue is the Council's determination that the construction of the roof extension is not limited to an alteration or addition to the roof but includes an alteration to the firewalls. The Council take the view that the firewalls are not part of the roof structure and refer to a previous appeal decision in respect of an earlier lawful development certificate for the site in 2009.[1] The Inspector in that case concluded that the erection of a roof extension which included raising the height of the firewalls was not PD. This was because the firewalls are upward extensions of the party walls and as such are not part of the roof structure.

7. The appellant submits that this is not the case as it is only proposed that the timber structure of the dormer cheeks will partially sit on the firewalls. However, the drawings show a line on the firewalls which indicates that the dormer will be constructed on them and I consider in order to do this the appellant will have to remove the gable coping stones. Class B of the GPDO states that an enlargement of the dwelling house consisting or an addition or alteration to its roof is PD. However, the appellant's proposal would involve altering the firewalls, as I have described, which are not part of the roof structure. For this reason I therefore conclude that the development would not be PD.

8. In addition, the drawings also show that the fascia on the dormer would extend beyond the outside face of the original external rear wall of the dwelling and as such the development would not comply with condition B.2.(ii) of Class B. This restricts the extent of the enlargement to within the line of the external wall.

9. The Council also considered whether the roof extension would be PD under Class A, which permits the enlargement, improvement or other alteration of a dwelling house. However, due to the height of the proposed eaves of the roof extension and its siting within 2m of the boundaries of the property, it would not comply with the criteria set out in paragraphs (d) and (i) of Class A.

10. To summarise, whilst the proposed roof extension would accord with the majority of the limitations set out in Class B of the GPDO, the proposed enlargement would not fall to be constructed entirely within the roof area and it would also not comply with paragraph B.2(ii). Overall therefore the proposed roof extension would not benefit from the PD set out in Schedule 2, Part 1 Class B of the GPDO.

## Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed roof extension was well-founded and that the appeal should fail. I will exercise

[1] Ref: APP/G5750/X/09/2100436

accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*D Fleming*

INSPECTOR