The Planning Inspectorate

Appeal Decision

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 06 April 2017

Appeal Ref: APP/N5090/X/16/3157495
18 Elm Park Road, London N3 1EB

- 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 Helen Hamer against the decision of the Council of the London Borough of Barnet.
- The application Ref 16/3832/192, dated 10 June 2016, was refused by notice dated 15 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 a roof extension.

Decision

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

Preliminary Matters and Main Issue

2. I have made my decision on the basis of the information submitted including the plans, statements and photographs of the site. I am satisfied that the information provided is sufficient for me to determine the appeal without entering the site.

3. The comments of interested persons have been carefully considered. Whilst I understand the points made, in an appeal concerning a certificate of lawful use or development, the planning merits of the proposal are not relevant. I have to decide the appeal based on the facts of the case, the planning legislation and established legal authorities.

4. The main issue to consider is whether the Council's decision to refuse the LDC irrespective of the wording of the reason for refusal, was well-founded.

Reasons

5. The application was refused as the Council considers the proposal is for a building operation which constitutes development requiring planning permission and such permission is not granted under Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In particular it regards the proposed enlargement as extending

beyond the outside face of an external wall of the original dwellinghouse and thus would not meet the requirements of Condition B.2(b) of Class B.

6. No 18 is a two-storey end terraced dwellinghouse with an original two-storey outrigger that does not quite ascend the height of the rear main wall to which it is attached. The submitted plans show a proposed roof extension over the flat roof of the outrigger. It would be built up against the external rear main wall, maintaining the same width as the outrigger and join the roof slope of the main element of the house. A roof storey would be created with a hipped roof, one of whose gabled ends would be attached to the main hipped roof of its host.

7. I accept the views of the main parties that the relevant part of the GPDO is Class B of Part 1 of the Second Schedule to the GPDO since the proposal is for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The dispute between the parties centres on Condition B.2(b)(ii) which requires that the enlargement must be constructed so that "*other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension*, *no part of the enlargement must extend beyond the outside face of any external wall of the original dwellinghouse.*"

8. The Council's statement is not easy to follow. At Paragraph 2.5 and elsewhere it accepts that the proposed roof extension would join the original roof to the original flat roof of the rear projection. However at Paragraph 2.8, in referring to another appeal decision it seems to deny that this is the case for the current proposal. In any event I have no difficulty in finding that the proposed enlargement would join the original roof of the dwelling to the roof of a rear extension.

9. The Council's interpretation of Condition B.2(b)(ii) would therefore appear to be misconceived in that this condition cannot apply to the proposal, due to the exclusion from its application of enlargements which join the original roof to the roof of a rear or side extension. The proposed dormer would extend beyond the outside face of an external wall of the original dwelling as the Council suggests, but this is not relevant since the proviso in the condition is met.

10. Both parties refer to government guidance[1] published to assist in the application and interpretation of the GPDO. It advises at page 36: "*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*."

11. The guidance supports the appellant's interpretation of Condition B.2(b)(ii). In addition it makes clear that the enlarged part of the roof may join the original roof to the roof of a rear or side extension "*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*".

12. I have considered the rest of the conditions in B.2: (a), (b)(i)(aa) and (bb), and (c)(i) and (ii) and see no reason why the proposal would not comply with these conditions or, in the case of (b)(i)(aa) and (bb) why they should apply in the first place, due to the exclusion from their application of hip-to-gable

[1] The DCLG Permitted Development for Householders: Technical Guidance 13 April 2016

enlargements or enlargements which join the original roof to the roof of a rear or side extension.

13. I have also had regard to the limitations imposed by B.1(a) to (f) inclusive. From the available evidence, including the plans and volumetric calculations, I am satisfied that these limitations would be complied with.

14. I have also borne in mind the possibility that Class A of Part 1 may be relevant to the proposal as an enlargement of the dwelling is involved and Class A permits the enlargement, improvement or other alteration of a dwellinghouse. However the proposal is in essence a single operation that is not divisible into discrete elements. Class A.1(k) states that development is not permitted under Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse. Therefore Class A is not relevant in this appeal.

15. An earlier appeal decision[2] is referred to by the parties involving a proposal for the conversion of an existing flat roof to a pitched roof. However it was decided that the enlargement was lawful under Class B where the original roof would join to the roof of a rear or side extension, in that case a side extension.

16. The other appeal decision referred to[3] involved a rear dormer extension where Condition B.2(b)(ii) was in issue. The rear dormer would join the original roof of the dwelling to the roof of the extended wing at the rear and in those circumstances the Inspector found that Condition B.2(b)(ii) did not apply.

17. Neither decision provides support for the Council's case that it is necessary to demonstrate that the current proposal would comply with Condition B.2(b)(ii).

18. I therefore find that the proposed development would be permitted development under Class B of Part 1 of Schedule 2 to the GPDO.

Conclusion

19. 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 roof extension at 18 Elm Park Road, London N3 1EB was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Grahame Kean

INSPECTOR

[2] APP/F2415/X/15/3121467
[3] APP/N5090/X/15/3133182

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT: 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 10 June 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 roof extension 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 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Grahame Kean
Inspector

Date:06 April 2017

Appeal Ref: APP/N5090/X/16/3157495

First Schedule

Roof extension as shown on plans: 255:01 Site Location Plan; 255:04; 255:05; 255:06; 255:10; 255:14; 255:15; 255:17; and Volume calculations sheet. As amended 10.06.2016.

Second Schedule

Land at 18 Elm Park Road, London N3 1EB.

NOTES

1. This certificate is issued solely for the purpose of section 192 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 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.

4. 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 operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in Lawful Development Certificate dated: 06 April 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

Land at: 18 Elm Park Road, London N3 1EB.

Appeal ref: APP/N5090/X/16/3157495

Scale: Not to Scale

Site Location Plan
1:1250