



Appeal Decision

Site visit made on 5 June 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 9 June 2017

Appeal Ref: APP/G5750/X/16/3165304

89 and 91 Whyteville Road, Forest Gate, London E7 9LS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] 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 Fayyaz against the decision of the Council of the London Borough of Newham.
- The application [Ref 16/02434/CLP], dated 4 August 2016, was refused by notice dated 17 November 2016.
- The application was made under section 192(1)(b) of the Act.
- The development for which an LDC was sought was: Loft conversion to both 89 and 91.

Decision

1. The appeal is dismissed.

Procedural matters

2. The Council used the following description of development on its decision notice: "*Certificate of lawfulness for proposed loft conversion (89-91)*", but this was not adopted by the Appellant in section E of the appeal form. In these circumstances, in the absence of anything more specific on the original LDC application form itself, I propose to deal with this appeal on the basis of the description that the Appellant does use in section E, as set out above.
3. The Planning Practice Guidance ['the Guidance'] makes clear that the applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?

Reasons

4. The Council's delegated report says: "*It is unclear to the Council as to what the basis for this application is*"; I agree. Neither the existing or proposed plans that accompanied the LDC application appear to accurately reflect what exists. The existing plans show, amongst other things, a consistent ridge line with the neighbouring dwelling and 3 rooflights in the front elevation of each dwelling [Nos 89 and 91], but I note that only 2 rooflights exist. In contrast to the existing plans whilst the ridge line of No 91 is the same level as No 89, both are noticeably higher than No 87. So even if I were to assume that the rear elevation on the existing plan has been shown as a '*blank canvas*' for the sake of contrast with what is shown on the proposed plan, the existing plan appears to be materially different from what actually exists on the ground.

5. The proposed plan maintains these discrepancies in terms of ridge height and rooflights on the front elevation, but in addition it was noted during the visit that the position of the rear bathroom windows is different from what is shown on the proposed plans. The Council's delegated report gives various reasons but ultimately says: "*Officers apportion limited weight to the drawings*". Whilst I would normally deal with such an application on the basis of the operations described in the application, including the submitted drawings, these concerns comprise good reasons why I decline to do so in this appeal.
6. However the key reason why I adopt that approach is that, when taken in the round, this submission appears to seek confirmation that the works that have been undertaken to the roof are lawful. Section 4 of the application form refers to pre-application advice received on 13 June 2011. Section 7 says: "*The loft conversion built falls under permitted development...*", where built is in the past tense. Section 8 confirms that the proposal has been started and no building operations are to be carried out and, given the nature of the development, the only logical explanation for that answer is that those operations are complete.
7. Moreover, at appeal stage, the grounds of appeal unambiguously say: "*My client has built a dormer 3 years ago of which received an enforcement action. We have requested the Council to submit information on what grounds we have received an enforcement...*" [sic]. The appeal form is dated 2016 and so "3-years ago" would be 2013, which is when the Council issued enforcement notices in relation to Nos 89 and 91 that alleged: "*...the construction of a rear roof extension and raising of the ridge height*". Those notices were upheld on appeal in a decision dated 9 October 2013¹. Nothing that was apparent during the site inspection leads me to approach this appeal on any other basis.
8. Section 191(2) of the Act says: "*...operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force*". The loft conversions that appear to be the subject of this LDC application cannot be lawful because they appear to be in contravention of the requirements of the enforcement notices that were issued on 25 February 2013, upheld on appeal and are now in force. To address the stated concern that the Appellant and his Agent are unaware of the grounds on which the enforcement notices were issued and upheld I provide the relevant excerpt from the appeal decision in the *Schedule* attached to this decision.

Conclusion

9. For the above reasons, having regard to all other matters raised, I conclude that the Council's refusal to grant an LDC for a loft conversion to both 89 and 91 at Nos 89 and 91 Whyteville Road, Forest Gate, London E7 9LS was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195 (3) of the Act.

Pete Drew

INSPECTOR

¹ Appeal Decisions APP/G5750/C/13/2194283, APP/G5750/C/13/2194737, APP/G5750/C/13/2196267 and APP/G5750/C/13/2196265.

Schedule

13. Looking at the properties from the road at the front, the ridge lines of both 89 and 91 now appear slightly higher than those of the adjacent properties. The ridges are also now set slightly to the rear of the highest points of the parapet walls indicating that the front faces of the roofs have been extended up and to the rear. It seems to me almost certain that the height of the highest part of the roofs was raised in the course of constructing the roof extensions addressed by the notices.
14. The permission afforded by Class B is also subject to a condition to the effect that the edge of the enlargement closest to the eaves of the original roof shall, as far as practicable, be not less than 20 cm from the eaves of the original roof. 'Permitted Development for Householders' makes it clear that this is to be measured from the eaves line towards the ridge of the original roof. Here the roof extensions project beyond and to the rear of the eaves line. They do not meet the relevant condition.
15. Either of these factors would be sufficient to take the roof extensions addressed by the notices outside the scope of Class B permitted development.