



Appeal Decision

Site visit made on 13 March 2018

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 May 2018

Appeal Ref: APP/T5150/X/17/3179211
25 College Road, London NW10 5EL

- 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 Charlie Hay against the decision of the Council of the London Borough of Brent.
 - The application, Ref 17/0647, dated 13 February 2017, was refused by notice dated 10 April 2017.
 - 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 'The proposal is for the conversion of an existing loft space into the master bedroom with en suite'.
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Decision

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

Procedural Matters

2. Although the development is described simply in the application as a loft conversion for a master bedroom and en suite, the appeal has been considered on the basis of the fuller description set out in the Council's notice of refusal and in the appeal form. This is because the plans show the erection of a dormer to the rear pitch of the main roof and the roof of the existing outrigger.
3. Section 192(2) of the 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. Applying the terms of Section 192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. 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. Therefore the issue of planning merits, such as the presence of other similar developments in the area, is not relevant to this appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development was well founded.

Reasons

6. The appeal relates to a mid-terrace property which has been extended to the rear at ground level. The appellant now proposes to enlarge the roof area of the main roof with a rear dormer to provide a new master bedroom. This roof extension would project across the flat roof of the two storey outrigger which would be enlarged to provide an en suite bathroom. The Council advise that the site does not lie within a conservation area and the property is not a listed building.
7. The first point at issue is that the Council have determined the proposal against the provisions of both Classes A and B of the GPDO whereas the appellant contends the development falls entirely within Class B. The Council submit that as the outrigger has a flat roof, the proposed extension above it would be an additional storey and would not be a roof extension. It would therefore not fall within the provisions of Class B which permits the enlargement of a dwelling consisting of an addition or alteration to its roof. However, even if the development were to fall wholly within Class B, the Council are of the view that the development would still fall outside the parameters of Class B due to its size. In all other respects the Council accepts that the development would accord with the remaining limitations set out in Class B of the GPDO and I see no reason to take a different view.
8. On the first point I consider the Council's approach to be incorrect. The wording of Class B does not refer to different roof sections of a dwelling. Furthermore, the Department for Communities and Local Government published 'Permitted development rights for householders, Technical Guidance' in April 2017 to assist with the interpretation of the GPDO. It sets out in respect of Class B, at page 37, that the enlarged part of the roof may join the original roof to the roof of a rear extension, whether the *shape* (my emphasis) or level of the pitch of the roofs are different to each other. The appellant's proposal is shown as a single, L-shaped structure with the extension over the main roof fully integrated with the extension over the flat roof. Whilst the roof of the outrigger is flat, this does not affect the determination that the whole of the structure falls within Class B and is looked at as one alteration or extension to the roof of the dwelling.
9. Turning to the volume calculations, I note that the parties initially agreed on the calculation for the size of the dormer but I find the Council has made a mistake on the calculation for the extension over the flat roof. Whilst the Council's measurements are listed as depth 2.89m, width 2.77m and height 2.94m, their written calculation uses 2.94m twice instead of once. This means that the Council's conclusions inflate the volume, albeit marginally. Notwithstanding this, the main difference between the parties is their view on what would be the depth of the roof extension. The appellant's volume study, which accompanied the appeal submissions, shows this to be '2441' and the Council's view based on the drawings is that this measurement would be 2.89m. These figures would mean that the total volume would either be within or would exceed the 40 cubic metres limit set out in Class B.

10. Consequently, following an exchange of emails between the parties, all of the dimensions were clarified. These are now shown on drawings accompanying an email from the appellant dated 19 April 2018. I have accepted these drawings on the basis that no injustice would be caused to the Council as they merely clarify what was not entirely clear at submission stage. My decision is therefore based on the written dimensions shown on these drawings.
11. These show that the depth of the extension over the flat roof would be 2.7m, the width would be 2.6m and the height would be 2.9m. The amended volume study diagram accompanying the dimensioned drawings now shows that the volume of the extension would be 21.1 cubic metres and the volume of the dormer would be 18.5 cubic metres. Adding these two figures together would result in a development of 39.6 cubic metres which is within the 40 cubic metres limitation set out in Class B. There is no disagreement between the parties that any other limitations of Class B are exceeded. Overall therefore, I consider the proposed alterations would benefit from the permitted development set out in Schedule 2, Part 1 of Class B of the GPDO.

Other Matter

12. The Council submit that the proposed assessment should be made against the relevant criteria at the time of the application. However I found that this was not clear and therefore sought clarity. I also consider that written dimensions are preferable as they are more precise than measurements taken from scaled drawings. If the development is not built in accordance with the dimensions then it is open to the Council to take the matter further.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a dormer to the rear pitch of the main roof and the roof of the existing outrigger 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.

D Fleming

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 13 February 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) since the development falls within Schedule 2, Part 1 of Class B of the Order.

Signed

D Fleming
INSPECTOR

Date: 03 May 2018

Reference: APP/T5150/X/3179211

First Schedule

The erection of a dormer to the rear pitch of the main roof and the roof of the existing outrigger as shown on drawings dated February 2017, numbered 109 013 Rev A, 109 016 Rev B, 109 017 Rev C, 109 015 Rev C and 109 118 which accompanied an email from the agent dated 19 April 2018.

Second Schedule

Land at 25 College Road, London NW10 5EL

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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

This is the plan referred to in the Lawful Development Certificate dated: 03 May 2018

by Diane Fleming BA (Hons) MRTPI

Land at: 25 College Road, London NW10 5EL

Reference: APP/T5150/X/3179211

Scale: NTS

