



Appeal Decision

Site visit made on 3 July 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/N5660/X/18/3215721
39 Finsen Road, London SE5 9AW

- 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 B Stramer against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/02727/LDCP, dated 27 June 2018, was refused by notice dated 6 September 2018.
 - The application was made under section 192(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 loft conversions to main roof of house and outrigger.
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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.

Application for costs

2. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Preliminary matter

3. Although the application form stated that work had started, clarification has been provided by the Appellant that work started just after the date of the application. That being the case, it is correct that the application be considered under s192 of the Act.

Reasons

4. The appeal property comprises an end of terrace two storey house. It includes an original two storey rear outrigger with a mono-pitched roof set at a lower level to the main roof of the house. The proposed development involves the construction of an L shaped dormer. One arm of the L would extend across the main rear roof slope whilst the other arm would extend a short distance along the outrigger at a lower level due to the difference in levels between main house and outrigger. The proposed extension thus joins the main roof to the roof of the outrigger.
5. The application for a LDC was made on the basis that express planning permission for the development was not required since planning permission is

granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Article 3 grants permission for classes of development described as permitted development in Schedule 2 to the Order. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class B of Part 1 specifically addresses enlargements consisting of additions or alterations to the roof. It is the Appellant's case that the development falls within this class, meeting all the specified limitations and conditions, and so is permitted development.

6. The matter in contention is whether the conditions B.2(b)(i)(aa) and B.2(ii) below should apply to the proposal or not. This turns on whether the development falls within the exception highlighted below, since there is no dispute the entirety of the eaves of the original roof are not maintained or reinstated and that the dormer over the outrigger extends beyond the outside face of an external wall.

B.2(b)(i)(aa)

Other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension, the eaves of the original roof are maintained or reinstated.

B.2(b)(ii)

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 extends beyond the outside face of any external wall of the original dwellinghouse.

7. When the application was made, it would appear that both the Council and the Appellant were of the same view that, in cases such as this, the exception did apply such that the two conditions did not have to be complied with. Indeed, the Council appears to have determined that the exception in condition B.2 did apply to such development as recently as late July 2018 and the Appellant has drawn attention to a number of LDCs issued in that month for L shaped dormer extensions within the Borough¹.
8. However, following an Inspector's decision relating to 54 Natal Road, issued on 11 July 2018,² where the Inspector found the L shaped dormer in that case not to be *an enlargement which joins the original roof to the roof of a rear or side extension* the Council decided to review its approach. Following receipt of that decision it undertook a review of appeal decisions on comparable cases in other local authority areas and found many which made a similar finding³. It therefore changed its position (as I understand from the representations in the accompanying costs application) on 20 August 2018. The decision on this case was made after that date and the Council therefore determined that conditions B.2(b)(i)(aa) and B.2(b)(ii) were not met.
9. The Appellant draws attention to the Department for Communities and Local Government's publication "*Permitted development rights for householders – Technical Guidance*". The guidance gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for

¹ Appellant Appeal Statement - Document 3

² Council Statement of Case - Appendix 1

³ Council Statement of Case - Appendices 2-6

condition B.2(b) it says: "*The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), 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*". This strongly suggests to me that the exception applies in this case as it describes the situation as proposed here and indicates that whether the outrigger is original or a later addition is immaterial; as is whether the level of the pitch of the main roof and that on the outrigger are different.

10. The Appellant has also drawn attention to a number of appeal decisions⁴ making the opposite finding to those produced by the Council and it should be noted that I was the author of two of them. It is apparent therefore that there is a difference in approach between Inspectors.
11. In those cases where it has been found that the exception in B.2(b) does not apply such that the conditions must be met, it seems to me that the two arms of the L shaped dormer have been treated as if they were two separate developments. For example, in the case of 54 Natal Road, the Inspector found that the rear wall of the main rear dormer would be joined to the end wall of the lower dormer rather than the original roof being joined to the roof of an extension by the enlargement.
12. A straightforward reading of the exception in B.2(b) is that "**an**" enlargement should join the original roof to the roof of a rear or side extension. The L shaped dormer proposed here is a single discrete operation and thus amounts to a single enlargement. That single enlargement clearly joins the main roof of the house to the roof of the outrigger – in my view it is not appropriate to treat each arm of the L as if it were a separate development.
13. In addition, the *Technical Guidance* is describing the house's rear projection or outrigger as falling within the meaning of "extension" whether original or not. That being the case, the description of *an enlargement which joins the original roof to the roof of a rear or side extension* applies and so neither condition B.2(b)(i)(aa) or B.2(b)(ii) is relevant to the proposal.
14. I note that one of the appeal decisions referred to by the Council makes the point that the Technical Guidance is simply guidance rather than statute, but it has been expressly prepared to give an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Most outriggers/rear wings on houses to which L shaped dormers are attached are original and, as subsidiary features, they are often referred to as rear extensions. It would be illogical if L shaped dormers were only allowed where the outrigger/rear wing was a later addition. If that were so, as one of my colleagues said, a rear wing would have to be demolished and rebuilt in order for the roof extension to benefit from permitted development rights⁵.

⁴ Appellant Appeal Statement - Document 4, Addendum Appeal Statement & Final comments letter dated 4 July 2019 - Appendix 1

⁵ Appellant Appeal Statement – Document 4

15. The *Technical Guidance* offers guidance that is of direct relevance to this case. It is intended as an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO. Where the Guidance clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case.

Other matters

16. At my request, the Inspectorate wrote to the parties following my visit to seek views as to whether the development could be considered permitted under Part 1 of Schedule 2. Part 1 addresses "Development within the curtilage of a dwellinghouse" and this development includes building up the party wall which straddles the boundary with the adjoining property. In arguing that it could, the Appellant drew attention to several supporting appeal decisions.
17. "Curtilage" is defined in the *Technical Guidance* "as land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area. The existing party walls of non-detached houses necessarily straddle one or both side boundaries but nonetheless they are part and parcel of the house and patently have an intimate association with each dwelling. The original side walls, albeit that they might be party walls, are an integral part of the structure of the dwellings and cannot be divorced from the remainder. I am therefore of the view that the wall falls within the curtilage (the two adjoining curtilages overlap each other) and thus building up from it would not disqualify the development from coming within Part 1 of Schedule 2.

Conclusion

18. 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 loft conversions to the main roof of the house and outrigger was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

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 27 June 2018 the proposed 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 development is "permitted development" falling within Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

B M Campbell
Inspector

Date 12 August 2019
Reference: **APP/N5660/X/18/3215721**

First Schedule

Loft conversions to main roof of house and outrigger.

Second Schedule

Land at 39 Finsen Road, London SE5 9AW

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 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 not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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.

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: 12 August 2019

by B M Campbell BA(Hons) MRTPI

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Do not scale

