



Appeal Decision

Site visit made on 17 April 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref: APP/N5660/X/18/3210374 115 The Chase, London SW4 0NR

- 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 Miss Beryl Morgan against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00905/LDCP, dated 26 February 2018, was refused by notice dated 16 July 2018.
 - 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 the erection of railings on two sides of an existing roof terrace.
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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.

Background

2. An appeal relating to a LDC is confined to the narrow remit of reviewing the Local Planning Authority's decision and then deciding whether it is or is not, '*well-founded*'. The planning merits of the case do not fall to be considered.

Reasons

3. Firstly, I find that the railings would amount to development as defined in Section 55 of the Act. They constitute a building operation, which s.55(1A)(c) and (d) define as including structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder. The railings would possess the attributes of size, permanence and affixation to the land necessary to comprise a building operation. This is not in dispute between the parties.
4. Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order (England) 2015 deals with development within the curtilage of a dwellinghouse. Classes A and B respectively deal with the enlargement, improvement or other alteration of a dwellinghouse and the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B deals permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. I consider that the proposed railings would lack solidity and sufficient size or substance to class as an enlargement of the

dwellinghouse, and it would not make the house appear larger. Thus, the railings would not fall to be considered under Class B. The dispute is whether the proposal would be permitted under Class C.

5. Class C deals with any other alteration to the roof of a dwellinghouse. The provision of railings on the top of a flat roof would amount to an alteration to the roof of a dwellinghouse. Paragraph C.1(b) provides that development is not permitted if the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof.
6. The railings would protrude about 1.1m beyond the plane of the (very slight) slope of the roof of the kitchen extension when measured from the perpendicular with the external surface of the roof. The only matter in contention is whether the reference to "original roof" applies to the roof in question. The kitchen extension was not part of the original dwelling but was constructed considerably later. Accordingly, the roof to the extension on which the railings would be constructed is not part of the original dwelling.
7. The word "original" is defined in the interpretation section of the Order. It says that "original" means—
 - (a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date;
 - (b) in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built.Criteria (c) and (d) relate only to buildings on Crown land, which is not applicable here.
8. A further definition is also relevant. "Building" is defined to include "any part of a building". Thus, the "original" dwelling, because it existed prior to 1948, is as it existed on 1st July 1948.
9. The Council contends that the words "original roof" mean the roof prior to its alteration by the development permitted under this Class. The Government's publication *Permitted Development Rights for Householders – Technical Guidance* refers to the meaning of "original" as set out in the GPDO and also states "...in the case of Class C, measurement of height is made against the original roof and not as in Class B where it is the existing roof. I consider that the term "original roof" has to be interpreted on the straightforward basis of what "original" means as defined in the GPDO; it refers to the original roof on the original dwelling. In this case, the original roof of the dwelling is much higher than the height of the proposed railings. Thus, they would not protrude more than 0.15m beyond the plane of the slope of the original roof, and therefore the proposal would be permitted by Class C.
10. The appeal decision relating to 20 Berens Road¹ gives support to the contention that railings are permitted under Class C. However, what is not clear from that decision is which version of the Town and Country Planning (General Permitted Development) Order 1995 was in force at the material time, which is the date on which the works were carried out. The unamended version of the Order permitted under Class C "any other alteration to the roof of a dwellinghouse",

¹ Ref: APP/T5150/C/13/2195757

with the only qualifying provision being that “development is not permitted under Class C if it would result in a material alteration to the shape of the dwellinghouse”. That Order was subsequently amended to insert the limitation relating to protrusions from the roof slope. On the basis of what is said in the decision letter, I can only assume that the railings in that case were considered to be permitted under the unamended provisions of Class C, and therefore it is of little relevance to this appeal.

11. The Inspector’s 2015 decision² in relation to a roof covering at 29 Gubyon Avenue, deals with an entire new roof, and can thus be distinguished from this case. Moreover, there is no discussion in the decision about the meaning of the “original roof”, and thus it is not helpful in reaching a decision on this case.
12. I therefore consider that the proposed railings would not protrude more than 0.15m beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof. Accordingly, the proposed development is one permitted under the Order.

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 railings on two sides of an existing roof terrace 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.

JP Roberts

INSPECTOR

² Ref: APP/N5660/X/14/2217466



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 26 February 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched 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 operations described in the First Schedule would be permitted under the provisions of Class C of Part A, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

JP Roberts

Inspector

Date

Reference: APP/X/N5660/X/18/3210374

First Schedule

The erection of railings on two sides of an existing roof terrace as shown on the application plans, unreferenced, but titled "existing and proposed elevations" and "roof terrace railings".

Second Schedule

Land at 115 The Chase, London SW4 0NR

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:

by JP Roberts BSc(Hons), LLB(Hons) MRTPI

Land at: 115 The Chase, London SW4 0NR

Reference: APP/X/ N5660/X/18/3210374

Scale:DO NOT SCALE

