

Appeal Decision

Site visit made on 18 September 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref : APP/N5660/X/19/3226956

Land at 50 Rommany Road, London, SE27 9PX

- 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 Ryan Whitcombe against the decision of the Council of the London Borough of Lambeth.
- The application Ref. 19/00198/LDCP, dated 23 January 2019, was refused by notice dated 19 March 2019.
- 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 (proposed) erection of a rear loft conversion over the existing rear addition.

Summary of Decision: 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.

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

3. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
4. The appeal site comprises a two storey mid terrace house with a 2 storey rear projection. The rear projection has a pitched roof and there is a rear dormer on the main rear roofslope. The proposal is to construct an extension over the existing rear addition linking the existing dormer extension to the new one.
5. Planning permission is granted by virtue of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) for certain

- classes of permitted development subject to specified conditions and limitations. Class B of Part 1 of Schedule 2 of the GPDO concerns enlargements consisting of additions or alterations to the roof.
6. The issue in dispute between the parties is whether the extension would satisfy Class B.2(b)(i)(aa) and B.2 (b)(ii).
 7. Condition B.2 (b) states:
“(b) the enlargement must be constructed so that –
 - (i) 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-
 - (aa) the eaves of the original roof are maintained or reinstated; and
 - (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and
 - (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.”
 8. If the proposal the subject of this appeal can properly be described as an ‘enlargement which joins the original roof to the roof of a rear or side extension’ it satisfies the exception set out in condition B.2 (b) (i) and (ii) and the requirements of B.2 (b) (i) (aa) and B.2 (b) (ii) do not apply. If the exception is not satisfied the conditions apply and there is no dispute that they are not met on the facts.
 9. The Department for Communities and Local Government publication ‘Permitted development rights for householders – Technical Guidance’ (the Technical Guidance) whilst not determinative provides a useful interpretation of the GPDO and is a material consideration of some importance. It states in relation to condition B.2(b) that ‘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’.
 10. The Technical Guidance takes a purposive rather than literal approach to the interpretation of the condition. I read it to say that whether the part of the house being extended is original or a latter addition is not material for the purposes of condition B.2. Whilst I acknowledge that the Technical Guidance is an aid to interpretation and that different Inspectors in different cases have placed differing weight on its application I find that it is of direct relevance to the facts of this appeal and I see no reason not to follow it in this case. There is no judicial authority as far as I am aware to the contrary.
 11. I find that the proposed extension satisfies the exception set out in B.2(b)(i)(aa) and B.2 (b)(i). The proposal can reasonably be considered an enlargement which joins the original roof to the roof of a rear or side extension. Therefore the conditions concerning eaves and extending beyond

the outside face of an external wall do not apply. It follows therefore that Class B is met and the proposal benefits from permitted development rights.

12. My attention is drawn to other applications and appeal decisions. I have determined this appeal on its own particular facts. I acknowledge that the Council's approach was adopted following review of the appeal decision relating to 54 Natal Road, issued on 11 July 2018. But I do not see this case as on all fours with the facts of that appeal decision and I have determined this case on its particular facts. The fact that the appeal decision post dates the Technical Guidance does not alter my conclusions. I also note that the Council accepts a recent appeal decision concerning 39 Finsen Road which accepts that there have been differences in approach by different Inspectors on appeal.
13. I find as a matter of fact and degree in this case that the proposal would satisfy the limitations and conditions in Class B including B.2(b)(i)(aa) and B.2 (b)(i). On the balance of probabilities I am satisfied that the proposal would have been lawful at the time the application was made.

Conclusion

14. 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 proposed rear loft conversion over the existing rear addition 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.

S. Prail

Inspector



LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by the Planning and
Compensation Act 1991)

IT IS HEREBY CERTIFIED that on 23 January 2019 the proposed operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked in pink on the plan attached to this certificate would have been lawful within the meaning of section 192 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 (as amended).

The development does not contravene the requirements of any enforcement notice in force.

S. Prail

INSPECTOR

Date: 16 October 2019

Reference: APP/N5660/X/19/3226956

First Schedule

Erection of a rear loft conversion over the existing rear addition in accordance with the plans and drawings submitted with the application including drawings EX-01, EX02, P-01 Rev A, P-02 Rev A and SP-03.

Second Schedule

Land at 50 Rommany Road, London, SE27 9PX

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, would not have been 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 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 the Lawful Development Certificate dated: 16 October 2019

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Not to Scale

