
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/19/3220893

Land at 42 Rudloe Road, London, SW12 ODS

- 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 Nicholas Scarborough against the decision of the Council of the London Borough of Lambeth.
- The application Ref. 18/04756/LDCP, dated 6 November 2018, was refused by notice dated 11 January 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 roof extension including the removal of a side chimney stack, and the replacement of two floor side windows with one first floor side window.

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.

Costs Application

1. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.

Preliminary Matters

2. 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.
3. I saw at my site visit that there are works being undertaken to the roof. I must consider whether if the works the subject of the application had commenced on the application date they would have been lawful for planning purposes and I have not taken into account works since that date.
4. The Council's first reason for refusal was that the proposal would not comply with Class A.3 (b) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). A.3 (b) is a condition which provides that certain specified windows must be obscure-glazed and non opening. The plans in support of the application did not annotate relevant windows as meeting this condition. As a matter of law any LDC issued pursuant

to Class A will be subject to the conditions set out in Class A.3. The Appellant recognises the error in the plans and the need to comply with the condition in the event of the issue of a LDC. It is therefore not necessary for me to consider this ground of refusal further.

Main Issue

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

Reasons

6. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
7. The appeal site comprises a two storey mid terrace house. The proposal is to erect an extension to the roof of the rear outrigger that extends forward to join the pitched roof of the main house.
8. Planning permission is granted by virtue of 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.
9. The issue in dispute between the parties is whether the extension would comply with conditions Class B.2(b)(i)(aa) and B.2 (b)(ii). There is no argument that any other relevant provision is not met and I have no reason to conclude otherwise.
10. 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. ”
11. The proposal would not maintain or reinstate the entirety of the eaves of the original roof and it would extend beyond the outside face of an external wall of the original dwellinghouse. The proposal will only comply with B.2 (b) (i) and B.2 (b) (ii) if it is treated as within the specified exceptions namely, 'a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension'.
12. I do not agree with the Council that the proposal comprises two separate extensions linked together and I have determined the application for one single extension as submitted. The fact that the segment of the main roof where intersection occurs is not continuous with the roof of the outrigger is not material as this is not required by Class B.

13. 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'.
14. I read the Technical Guidance to be saying that whether the outrigger is original or a later addition is immaterial for the purposes of the condition. It takes a purposive rather than literal approach to the interpretation of the condition.. 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.
15. My attention is drawn to other applications and appeal decisions. 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 or others drawn to my attention by the Council and I have determined this appeal on its own particular facts.
16. I find as a matter of fact and degree in this case that the proposal would be an enlargement which joins the original roof to the roof of a rear or side extension. It satisfies the exception set out B.2 (b) (i) and (ii) and therefore the conditions do not apply. I am satisfied that the proposal would have been lawful at the time the application was made.

Conclusion

17. 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 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 6 November 2018 the proposed operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked 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/19/3220893

First Schedule

Erection of a rear roof extension including the removal of a side chimney stack, and the replacement of two floor side windows with one first floor side window in accordance with the plans and documents submitted with the application including drawings 719-CLP1, 719-CLP2, 719-CLP3 .

Second Schedule

Land at 42 Rudloe Road, London, SW12 ODS

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

