



Appeal Decision

Site visit made on 5 November 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/G5750/X/19/3220052

1A Tavistock Road, Stratford, London E15 4ER

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kevin Manic against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/02989/CLP, dated 18 October 2018, was refused by notice dated 30 October 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 a loft conversion with rear dormer.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary Matters

2. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability.
3. The Council suggest that the drawings are inaccurate. However, I need to determine the appeal on the evidence before me. I will deal with the appeal on the basis of the drawings submitted.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. The extension would extend from the rear pitched roof of the dwelling and over part of the flat roof to the rear. Where the pitched and flat roofs join may have been the eaves at the rear of the building as originally constructed, prior to addition of the flat roofed element to the rear.
6. The Council consider the proposals shown on the plans submitted with the application would not comply with the conditions at B.2 (b) (i) (aa) and (bb), Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). These relate to

whether the roof extension would maintain or reinstate the eaves of the original roof and whether the enlargement closest to the eaves of the original roof is not less than 0.2 metres from the eaves.

7. The appellant suggests that the two storey element of the dwelling with a flat roof is original to the dwelling. However, the Council suggest that is not part of the original building. Beyond those assertions, no evidence has been presented to demonstrate when that element of the building was constructed in order to ascertain whether or not it is original to the building, as defined in the GPDO. As there is no evidence that the rear two storey element was subject of a planning application, on the balance of probability I conclude that it was existing on 1st July 1948 such that it constitutes an original part of the building for the purposes of the GPDO.
8. The Council state that the extension would be within 0.2 metres of the eaves. However, they do not specify which part of the eaves. The appellant states that the extension would be at least 0.2 metres from the eaves to the side and rear of the flat roofed element of the building. The extension would be significantly further from the rear eaves. The drawings reflect what the appellant suggests.
9. Condition B.2 (b) (i), Class B, Part 1, Schedule 2 of the GPDO refers to where an enlargement joins the original roof to the roof of a rear extension as an exception to the extension not being within 0.2 metres of the eaves. Even if the rear projection were an extension, the proposal would, therefore, join the original roof to the roof of the extension so could cover the eaves of the original roof where it joins the extension.
10. 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 a loft conversion with rear dormer was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

AJ Steen

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 18 October 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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 development would benefit from the planning permission granted by Article 3 and Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

AJ Steen

INSPECTOR

Date: 05 December 2019
Reference: APP/G5750/X/19/3220052

First Schedule

A loft conversion with rear dormer.

Second Schedule

Land at 1A Tavistock Road, Stratford, London E15 4ER

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 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: 05 December 2019

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Not to scale

