



Appeal Decision

Site visit made on 2 December 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Appeal Ref: APP/H5960/X/19/3223514
22 Penwortham Road, London SW16 6RE

- 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 Alex Leschallas against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5699, dated 29 November 2018, was refused by notice dated 25 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 a rear roof extension.
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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 Matters

3. In its decision notice, the Council altered the description of development from that given by the appellant in the application form. This cannot be done without the appellant's agreement and, in any event, the description given on the application form is clear and accurate.
4. The 'existing' plans for the proposal incorrectly show the single storey rear extension as this appeared to be full width. This does not though affect my consideration of the proposed development.

Main Issue

5. The main issue is whether the proposed rear roof extension would be granted planning permission by Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

Reasons

6. The appeal property is a mid-terrace house which has a two storey rear outrigger and single storey extension. The outrigger appears to be original and has a mono-pitched roof at a lower level than the roof of the main house.
7. The proposal is for a rear dormer which would be constructed partly on the main roof and partly on the rear outrigger roof, connecting the two and providing additional living accommodation at second floor level.
8. Class B indicates that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development (PD). It is the appellant's case that the proposed development meets with all conditions and limitations in this class. The Council however contends that it would not comply with the condition in B.2.(b)(ii).
9. This condition effectively stipulates that to be PD under Class B, the enlargement must be constructed so that: "no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse".
10. The Council submits essentially that, due to the existing rear outrigger being set below the eaves of the main dwelling, the proposed rear roof extension would extend beyond the outside face of an external wall of the original dwellinghouse. The appellant puts forward various arguments seeking to demonstrate an opposing view.
11. However, condition B.2(b)(ii) includes within it an exception to this stipulation in that it will not apply "in the case of an enlargement which joins the original roof to the roof of a rear or side extension". Giving the words in B.2(b)(ii) their ordinary meaning, it is apparent that the proposed rear roof extension falls within this exception. It would be a single operational development which would link or connect or join the main roof of the house to that of the rear outrigger.
12. The government publication - "Permitted development rights for householders – Technical Guidance" provides guidance on the operation of PD rights for householders. It specifically covers the B.2.(b)(ii) exception, stating that: "*The enlarged part of the roof may join the original roof to the roof of a rear or side extension...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*".
13. Thus the Technical Guidance confirms that what is proposed in this case would be expected to fall within the B.2.(b)(ii) exception. In particular, it indicates that whether or not the outrigger is original is not relevant, and nor is the shape and pitch levels of the roofs proposed to be joined. I acknowledge other appeal decisions cited in respect of similar development but I have made my assessment based upon the particular facts of this case.

Conclusion

14. For the reasons given above, I conclude that on the evidence now available, the proposed rear roof extension would be granted planning permission by Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). The Council's refusal to grant a certificate of lawful use or development in

respect of the proposed rear roof extension was not well-founded and so the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

V Bond

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 29 November 2018 the 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 proposed rear roof extension, as described in the application Ref 2018/5699 dated 29 November 2018 and shown on the submitted plans Drawing Nos 01, 06, 07, 08 and 09 all dated November 2018 would be granted planning permission by Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

V Bond

Inspector

Date 16 January 2020

Reference: APP/H5960/X/19/3223514

First Schedule

Rear roof extension.

Second Schedule

Land at 22 Penwortham Road, London SW16 6RE

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, 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 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: 16 January 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

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Scale: NOT TO SCALE

