



Appeal Decision

Site visit made on 27 January 2020

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/L5240/X/19/3229651 18 Coniston Road, Croydon CR0 6LN

- 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 Dr J Fegredo against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/01772/LP, dated 13 April 2019, was refused by notice dated 24 May 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 loft conversion involving the construction of an L shaped dormer.
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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.

Reasons

2. The appeal property comprises a two storey, mid-terrace house. It includes an original two storey rear outrigger with a mono-pitched roof set at a lower level to the main roof of the house.
3. There is no dispute that the loft conversion involves development within the meaning of s55 of the Act for which planning permission is required. It is the Appellant's case that permission is granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Article 3 grants permission for classes of development described as permitted development in Schedule 2 to the Order. Part 1 of Schedule 2 deals with development within the curtilage of a dwellinghouse and Class B of Part 1 specifically addresses enlargements consisting of additions or alterations to the roof. It is the Appellant's case that the development falls within this class, meeting all the specified limitations and conditions, and so is permitted development.
4. The Council, however, says that condition B.2(b)(i)(bb) is not met and thus the development is not permitted by way of Class B. The condition states:

The enlargement must be constructed so that, 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, the edge of the enlargement closest to the

eaves of the original roof is, so far as is practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.

5. The Appellant, in applying this condition, says it would not be practicable to set the enlargement in by 0.2 metres on the outrigger and explains why that is so with reference to the existing construction of the outrigger and how it would need to be altered. The Council does not challenge the Appellant's reasoning but rather argues that the setback still needs to be met. However, if it is not practicable to do so as the Appellant has explained, and the Council has not questioned, then my view is that the condition would be met. The edge of the enlargement closest to the eaves on the main roof is shown to be not less than 0.2 metres from the eaves and it has been explained why it would not be practicable to achieve that set back from the eaves of the outrigger.
6. The Appellant has drawn attention to the Department for Communities and Local Government's publication "*Permitted development rights for householders – Technical Guidance*". The guidance gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. At page 37, the Guidance gives an example of where the 0.2 metre set back would not be practicable: "*One circumstance where it will not prove practical to maintain this 0.2m distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house.*" It is not suggested that that example, which is in any event is comparable to the situation here, is the only such circumstance where the setback would not be practicable.
7. Notwithstanding that I find in this case that the condition would be met, it is my view that condition B.2(b) does not apply to the proposed development in any event since it excludes "*an enlargement which joins the original roof to the roof of a rear or side extension*" from the requirements. That is what is being proposed here. The Guidance for condition B.2(b) says: "*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*". This strongly suggests to me that the exception applies in this case as it describes the situation as proposed here and indicates that whether the outrigger is original or a later addition is immaterial; as is whether the level of the pitch of the main roof and that on the outrigger are different. Thus condition B.2(b) is not relevant to the development proposed.
8. For the reasons given above I conclude on the evidence available that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion involving the construction of an L shaped dormer at 18 Coniston Road, Croydon CR0 6LN 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.

B M Campbell

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 13 April 2019 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 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 for which planning permission is granted by Article 3(1) of that Order.

B M Campbell

Inspector

Date 11 February 2020

Reference: **APP/L5240/X/19/3229651**

First Schedule

A loft conversion involving the construction of an L shaped dormer as shown on the following drawings submitted with the application:

Location plan

Block plan

Existing floor plans

Existing elevations

Proposed floor plans

Proposed elevations

Proposed section

Second Schedule

Land at 18 Coniston Road, Croydon CR0 6LN

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, 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: 11 February 2020

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Not to scale:

