
Appeal Decision

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/K5600/X/19/3241865

2B Lexham Mews, London W8 6JW

- 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 Nanik Daswani of EcoProperties (UK) Ltd against the decision of the Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref CL/19/06281, dated 11 September 2019, was refused by a notice dated 4 November 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is the construction of a chimney stack.
-

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.

Preliminary Matters

2. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved.
3. An accompanied site visit was arranged for the 30 March 2020. However, the site visit was cancelled in response to travel restrictions currently in place due to the COVID-19 pandemic. Nevertheless, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional evidence supplied by the parties and confirmed as being accurate by the Council. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
4. I note that a third party has referred to the planning merits of the development. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

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

Reasons

6. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 (the GPDO) sets out permitted development rights and accompanying limitations and conditions as they apply to development within the curtilage of a dwellinghouse. Class G of Part 1 relates to the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse (Class G).
7. The appellant seeks to establish that the building would be granted permission by virtue of Class G. There is no dispute between the parties that the development falls to be considered under Class G. Nor is there any dispute that the development would adhere to the limitations under Class G set out at paragraph G.1 (a) and (c). I have no reason to disagree with these findings.
8. The limitation set at paragraph G.1 (b) is that the height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more. The Council's position is that the proposed chimney stack would exceed the highest part of the roof by 1.95 metres. It has taken the ridge line of the mono-pitch roof to be the highest part of the roof. Consequently, the chimney stack would then fail to comply with the limitation at paragraph G.1 (b).
9. However, the appellant considers that the flat roof level above the structure that provides access to a door/stairs constitutes the highest level of the roof. The submitted drawings indicate that the height of the chimney stack would not exceed that roof level by 1 metre or more. As a result, the appellant considers that the development would comply with the limitation at paragraph G.1 (b).
10. The Ministry of Housing, Communities and Local Government's publication '*Permitted Development Rights for Householders*' Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to interpretation of the GPDO. It provides guidance on the term '*highest part of the roof*' and it states that it will be the height of the ridge line of the main roof (even though there may be other ridge lines at a lower level) or the height of the highest roof where roofs on a building are flat.
11. The term '*roof*' is not defined within the GPDO or the TG and I acknowledge that the appellant has cited a number of dictionary references and an appeal decision¹ in this respect. I have taken '*roof*' to have its ordinary meaning as a structure that covers or forms the top of a building. The dwellinghouse in this case has a variety of structures that together form the top of the building or cover it.
12. The majority of the roof is made up of a flat roof that is used as a roof terrace. Another part of the roof has a mono-pitch over a row of clerestory windows. Access to the roof terrace is via a doorway and stairs that are housed in a structure that projects above the roof terrace and the ridge line of the mono-pitch roof. This structure has a partially flat/partially sloping roof covering it. As

¹ APP/Q5300/X/10/2120444

this structure covers and forms part of the top of the building, I consider that it is an integral part of its roof.

13. In this case parts of the roof are flat and parts are pitched. The TG does not give any assistance in defining what the highest part of the roof will be where there is both flat and pitched roofs. However, in this case the mono-pitch roof only constitutes part of the overall roof form. Moreover, there are a number of flat roofs to the building and cumulatively they comprise the majority of that overall roof form. The highest flat roof is the flat part of the roof directly above the access door/stairs. As such, it is reasonable to consider that the roof over that access door/stairs is the highest part of the roof.
14. It follows that the proposed chimney stack would meet the limitation at paragraph G.1 (b). In the absence of any evidence that the proposal would fail to meet any other limitation under Class G I find that the construction of the chimney stack would constitute development which is permitted under Article 3, Schedule 2, Part 1 of the GPDO.

Conclusion

15. 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 construction of a chimney stack was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

D. Boffin

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 11 September 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 building operations would be development permitted under the provisions of Class G of Part 1 of Schedule 2 of Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D. Boffin
Inspector

Date: 16 April 2020

Reference: APP/K5600/X/19/3241865

First Schedule

The construction of a chimney stack as shown on Drawing Nos: C100; C101; C102; C103 and C104.

Second Schedule

Land at 2B Lexham Mews, London W8 6JW.

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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 April 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land at: 2B Lexham Mews, London W8 6JW

Reference: APP/K5600/X/19/3241865

Scale: Not to Scale



This Plan includes the following Licensed Data: OS MasterMap Colour PDF Location Plan by the Ordnance Survey National Geographic Database and incorporating surveyed revision available at the date of production. Reproduction in whole or in part is prohibited without the prior permission of Ordnance Survey. The representation of a road, track or path is no evidence of a right of way. The representation of features, as lines is no evidence of a property boundary. © Crown copyright and database rights, 2017. Ordnance Survey 0100031673