



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/H5960/X/19/3243066
66 Shelgate Road, London SW11 1BQ

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Adam Moore against the Council of the London Borough of Wandsworth.
- The application Ref 2019/4204 is dated 27 September 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 work required to construct dormer extension over existing outrigger.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

1. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellant and the Council have agreed to the appeal proceeding on this basis.

Main Issue

2. The main issue in this appeal is whether the proposal would be wholly granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

3. It is for the appellant to show that an LDC should be issued, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a two storey end of terrace dwelling. At the rear of the dwelling is a two storey extension or outrigger, with a dual pitched roof. The ridge line of the outrigger roof sits slightly below the eaves level of the main roof of the dwelling. The outrigger eaves line is approximately level with the middle of a first floor window in the rear wall of the dwelling.

5. The GPDO at Article 3, Schedule 2, Part 1 Class B, grants planning permission for additions or alterations to the roof of a dwelling. According to the submitted plans, the proposal involves constructing a dormer over the outrigger roof, joined to the main roof of the dwelling. The outrigger roof forms part of the roof of the dwelling. The proposal does not exceed any of the relevant limitations in terms of its size, height and location in Class B paragraph B.1. The condition at Class B, paragraph B.2 (b) (ii) permits a roof enlargement which extends beyond the outside face of an external wall of the dwelling where, as in this instance, the enlargement would join the original roof to the roof of a rear extension. The proposal would not breach any of the other conditions in paragraph B.2. As a result, the proposal meets the limitations and conditions of Class B. The Council did not seek to argue otherwise.
6. The GPDO Article 3, Schedule 2, Part 1 Class A, grants planning permission for the enlargement, improvement or other alteration of a dwelling. The starting point for any assessment against Class A must be that the proposal would also involve works relevant to that Class. However, as the works would take place entirely within the area of the outrigger roof and the main roof, the proposal is contained within the roof area of the dwelling. The works would join the two elements of the roof together but would not go beyond the perimeter of the existing roof to do so. No part of the works would be below the eaves level of the outrigger roof. The proposal would not involve any enlargement of the dwelling footprint or a raising of any part of the rear external wall above the eaves level; nor would it involve any enlargement of the external walls of the outrigger. Therefore, as a matter of fact and degree, I am not persuaded that Class A is of relevance to the proposal, as none of the works would involve an enlargement to the dwelling outside of Class B.
7. I have reached the above findings based on the individual circumstances of this case, having regard to the GPDO and the Government's Technical Guidance¹. Both main parties referred to and quoted from various recent appeal decisions for outwardly similar developments in support of their respective cases. However, limited details were provided in respect of those appeals. In any event, circumstances are likely to vary markedly between individual cases, depending on factors including the arrangement and size of the outrigger and its relationship to the external walls and roof of the rest of the dwelling, as well as the nature of what has been proposed. As such factors are likely to materially affect which Classes in the GPDO Article 3 Schedule 2 Part 1 are relevant to a particular scheme, it is perhaps unsurprising that the various appeals have had differing outcomes. As a result, the appeal decisions referenced are of limited relevance to the proposal.
8. Therefore, it has been shown on the balance of probability that the proposal as a whole would be granted planning permission by the GPDO Article 3, Schedule 2, Part 1 Class B and is lawful for planning purposes.

Conclusion

9. For the reasons given above I conclude that, on the evidence now available, the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

¹ Permitted development for householders: Technical Guidance MHCLG September 2019.

Formal Decision

10. 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.

Stephen Hawkins

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 27 September 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

On the balance of probability, the proposal would, as a whole, be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Stephen Hawkins

Inspector

Date: 29 May 2020

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First Schedule

Work required to construct dormer extension over existing outrigger
(As shown on the following drawings: 1012_66SR_X001_PD Rev A;
1012_66SR_X003_PD Rev A; 1012_66SR_D101_PD Rev A;
1012_66SR_D102_PD Rev A; 1012_66SR_D103_PD Rev A;
1012_66SR_D104_PD)

Second Schedule

Land at 66 Shelgate Road, London SW11 1BQ

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: 29 May 2020

by **Stephen Hawkins MA MRTPI**

Land at: 66 Shelgate Road, London SW11 1BQ

Reference: APP/H5960/X/19/3243066

Scale: Not to scale

