



Appeal Decision

Site visit made on 11 August 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/N5090/X/19/3239227

7 Fredericks Place, London N12 8QE

- 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 B Kerai against the decision of London Borough of Barnet.
 - The application Ref 19/3889/192 dated 13 July 2019 was refused by notice dated 2 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 an application for a certificate of lawful use or development is sought is loft conversion with the formation of a rear and outrigger dormer, and skylights to front roof slope¹
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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.

Procedural Matters

2. The Council's refusal notice refers to Plan Number PD-01 and extracts of that plan are referred to by both parties in their evidence. Although other plans were referred to by the Council, both parties have subsequently confirmed that Plan Number PD-01 is the only relevant plan in determining the appeal.
3. I have as part of the appeal asked for comments from both parties upon the wording of Paragraph B.2(b)(ii) of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) and have had regard to those comments in making my decision.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC for the application on the basis that it did not constitute permitted development by virtue of Article 3 Schedule 2 Part 1 of the GPDO was well-founded.

¹ There is no power under Section 192 of the Act for the Council or an Inspector to change the description of development.

Reasons

5. In any application for an LDC, the burden of proof is on the applicant to demonstrate that on the balance of probabilities that the proposal would have been lawful at the date of the application.
6. The dwelling is a two storey mid terrace property with an original two storey extension which is usually referred to as an outrigger with a monopitch roof set at a lower level to the main roof of the dwelling. The proposed development relates to an L-shaped dormer of which one arm of the L shape would extend along the roof of the main body of the dwelling and the other arm would extend along part of the outrigger.
7. The application was made on the basis that express planning permission for the development was not required since planning permission is granted by Article 3 of the GPDO. Article 3(1) of the GPDO grants planning permission for those classes of development described as 'permitted development' (PD) in Schedule 2. Class B goes on to set out permitted development rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
8. It is accepted by the parties that the proposed development complies with all of the other conditions and limitations associated with Class B of the GPDO and I see no reason to disagree. The only point of dispute is the wording of the condition set out in Class B.2(b)(ii) and how it applies to the development.
9. B.2(b)(ii) states that **"other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse"**.
10. The Council's refusal notice refers to the development not falling within permitted development rights as it would extend beyond the outside face of an external wall of the original dwellinghouse.
11. Both parties subsequently addressed the reason for refusal in their evidence. I do however agree with the Council that the proposed development would extend beyond the outside face of the external wall of the main body of the dwellinghouse. The Council at paragraph 5.11 of its statement has outlined in red the extent of the breach which is roughly triangular in shape on the external wall of the main body of the house. The difference in height between the main body of the dwelling and the outrigger means that the lowest part of the dormer on the outrigger roof would extend beyond the external wall of the main body of the dwelling.
12. With an outrigger dormer element of this design where the base of the dormer follows the line of the outrigger pitched roof, a difference in heights between the main body of the house and the outrigger would inevitably result in a breach as not all of the outrigger dormer element would extend beyond the roof of the main body of the dwelling rather than an external wall. Whilst it is unclear why the wording distinguishes between extending beyond a roof and an external wall, the wording nevertheless refers only to the outside face of any external wall.
13. However, the need to comply with the second part of the wording only arises *"other than in the case of an enlargement which joins the original roof to the*

roof of a rear or side extension." Neither of the parties originally commented upon this first limb of the exception but were subsequently given the opportunity to do so. The Council's view is that it is the rear wall of the main rear dormer which would be joined to the end walls of the lower dormer above the outrigger, rather than the house's original roof being joined to the roof of the extension and it would therefore not join the two roofs.

14. However, that interpretation essentially treats each arm of the development as if it were a separate development. Whilst each case will depend upon its own circumstances, on a straightforward reading of the exception in B.2(b)(ii) it would appear to me that the development before me as an L-shaped dormer is one single proposal and therefore **an** enlargement. As an enlargement, it does join the original roof to the roof of a rear or side extension i.e. the outrigger roof.
15. The outrigger, whilst part of the original building, could be described as an extension to the main body of the building whether original or not as there is nothing in the wording to suggest a distinction should be drawn between whether an outrigger is original or a later addition. For that reason, I conclude that it is not necessary for the appellant to demonstrate that the development would conform to Paragraph B.2(b)(ii) of the GPDO because the condition does not apply to the development.
16. Other than the reference to the terms of paragraph B.2(b)(ii), the Council has not indicated in its delegated report or at any subsequent stage of the appeal that the development would not benefit from permitted development rights under Class B or Class C which refers to "other alterations to the roof of a dwellinghouse." Nothing has been presented that would lead me to conclude that the proposal would not comply with those requirements. Consequently, having regard to the above, I conclude that the proposal would have been lawful at the time that the application was made.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the loft conversion with the formation of a rear and outrigger dormer, and skylights to front roof slope at 7 Fredericks Place, London, N12 8QE was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.

E. Griffin

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 July 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:

Planning permission would have been granted for its provision by Part 1, Class B and Class C of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015

Signed

Eileen Griffin
Inspector

Date: 30 September 2020

Reference: APP/N5090/X/19/3239227

First Schedule

Loft conversion with the formation of a rear and outrigger dormer, and skylights to front roof slope

Second Schedule

Land at 7 Fredericks Place , London N12 8QE

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: 30 September 2020

by E Griffin

Land at: 7 Fredericks Place London N12 8QE

Reference: APP/N5090/X/19/3239227

Scale: Not to scale

