
Appeal Decision

Site visit made on 2 December 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 December 2020

Appeal Ref: APP/U5360/X/20/3253080
20 Cleveleys Road, London E5 9JN

- 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 Stuart Jones against the decision of London Borough of Hackney.
 - The application Ref 2019/3629 dated 4 October 2019 was refused by notice dated 16 December 2019.
 - The application was made under section 191(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 for a rear roof extension and installation of one rooflight to front roofslope
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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 existing operation which is considered to be lawful.

Procedural Matters

2. The description of the development is taken from the description used by the Council on the refusal notice. The original detailed description on the application form by the appellant stated that a minor amendment has been made since the grant of a previous LDC for the development prior to the construction of the rear roof extension. Nevertheless, I do have to assess the development as now constructed and the Council's simpler description is therefore more appropriate.
3. A site visit had been arranged on an unaccompanied basis in view of the ongoing Covid -19 crisis once access to the rear garden had been obtained. However, as the Council's representative attended at site, I conducted an accompanied site visit to the rear of the garden.

Reasons

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 under Class B of Schedule 2 of Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(the GPDO) was well-founded.

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 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. The Council's decision notice refers to the development not being PD under Class B of the GPDO. Class B refers to PD rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. To qualify as PD, development has to fall within limitations and conditions. Paragraph B.2(a) states that the materials used in any exterior work must be of similar appearance to those used in the construction of the exterior of the dwellinghouse.
7. The comments section of the Council's delegated report states that the windows on the existing rear dormer are not of similar appearance to existing windows of the dwellinghouse but does not contain any explanation as to why the Council formed that view. The Council has not provided any further details as part of this appeal. However, there is no indication from the Council that the other parts of Class B of the GPDO are not met and I see no reason to disagree with that assessment.
8. The appeal dwelling is a terraced property with a single storey extension at the rear coming off a two storey outrigger. The outrigger has a traditional sash style window at first floor level with feature bricks above the window but more modern windows and a door at the ground floor extension. The variety of window styles and sizes continues on the rear main body of the appeal dwelling with a bay type window at first floor level. A large tree in the rear garden does currently partially block views of the main body of the appeal dwelling but nevertheless the window shapes and sizes could be seen on site and are also shown in the appellant's drawings. The rear roof extension which is the subject of the LDC (together with a rooflight to the front roofslope) has three windows of different sizes and the appellant has demonstrated by reference to drawings how those window sizes are replicated in the windows of the original dwelling.
9. The thickness of the window frames at dormer level are intended to replicate the size and thickness of windows at ground and first floor level. The appellant avoided using plastic UPVC windows on the grounds as they would not be in keeping with the original dwelling. The materials used are said to be composite thin timber/metal frame. The colour of the dark window frames match the colour of the roof slates and therefore blend in with the roof.
10. The purpose of the condition is to ensure that any alterations or addition minimises visual impact and is sympathetic to the original house. The visual impacts of the materials is therefore important. However, there is a mix of window styles on the original dwelling, the windows in the extension in terms of size replicate those in the original dwelling and the new window frames are dark so as not to stand out. I do therefore consider that the materials used in the exterior work of the development are of a similar appearance to those used in the construction of the exterior of the dwellinghouse. The development does

therefore fall within condition B.2(a) and is therefore P.D as there is no dispute that the other limitations and conditions of Class B have been met.

Other Matters

11. At the site visit, both parties pointed out other dormer extensions in the vicinity of the appeal dwelling. However, an assessment of PD is not a planning application and comparisons with other dwellings with dormer extensions are not appropriate when the issue before me is whether the development does constitute PD under Class B of Schedule 2 of Part 1 of the GPDO.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the rear roof extension and installation of one rooflight to front roofslope at 20 Cleveleys Road, London, E5 9JN 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 191
(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 4 October 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 Class B of Schedule 2 of Part 1 of the Town and Country Planning (General Permitted Development) Order 2015

Signed

E Griffin
Inspector

Date: 24 December 2020

Reference: APP/U5360/X/20/3253080

First Schedule:

Rear roof extension and installation of one rooflight to front roofslope

Second Schedule

Land at 20 Cleveleys Road, London E5 9JN

NOTES

This certificate is issued solely for the purpose of Section 191 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 was 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 December 2020

by E Griffin

Land at: 20 Cleveleys Road, London E5 9JN

Reference: APP/U5360/X/20/3253080

Scale: Not to scale

