



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26th July 2021

Appeal Ref: APP/A5270/X/21/3266241

494 Whitton Avenue West, Greenford, UB6 0EG

- 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 Sazz Vamadevan against the decision of the Council of the London Borough of Ealing.
 - The application Ref 203137CPL, dated 11 August 2020, was refused by notice dated 20 October 2020.
 - 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 single storey rear extension; rear roof extension, and installation of three roof lights to front roof slope.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawfulness ('LDC') was well-founded. The development would be lawful if the proposed operations described in the application would fall within the provisions of the Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') if instituted on the date of the application.

Reasons

3. The Council's reason for refusal is not related to the roof extension in any way and only to the ground floor rear extension. The Council, in its delegated decision, set out the requirements and limitations from Classes B and C and , based on the plans submitted with the application (Drawing Numbers: 2131.1 Rev A, 2131.2. Rev B and 2131.3.Rev A) and was satisfied that the proposals in relation to the roof extension and roof lights met them. I have no reason to doubt the parties on the point and I am therefore satisfied that the proposals relating to the rear roof extension and three roof lights to the front roof slope would be permitted development pursuant to Schedule 2, Part 1, Classes B and C of the GPDO.

4. The Council's reason for refusal was that the proposed development falls outside of the provision of Schedule 2, Part 1 of the GPDO and is therefore unlawful. In particular, the Council stated that the rear ground floor extension required prior approval as it would exceed the permitted depth of 3 metres (contrary to Class A.1 f)(i)) and also that the eaves height would be over the permitted height of 3 metres (contrary to Class A.1 i)). The Council's case is that the plans submitted with the LDC application show that the eaves would be at the height of 3.25 metres when measured from the natural ground level at the base of the outside wall of the proposed extension to the point where that wall would meet the upper surface of the roof which is in line with the Technical Guidance.
5. Article 2(2) of the GDPO explains that 'any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level' – and that 'ground level' in this context means 'the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground...is not uniform, the level of the highest part of the surface of the ground adjacent to it'. The appellant's case is that prior approval was sought and granted under Reference 202754PALHE and this was predicated on the correctly calculated eaves height measurement taken from the level of the surface of the ground immediately adjacent to the rear elevation of the host property.
6. The difference in opinion in this case arises from whether the height is measured from the outside wall of the host property or the outside wall of the proposed extension.
7. The Technical Guidance, which is an aid to interpretation and application of the Schedule 2, Part 1 of GPDO, explains that for the purposes of measuring 'height' from 'ground level', 'the eaves of a house are the point where the lowest point of a roof slope, or a flat roof meets the outside wall.' The roof proposed in this case is flat. The diagram accompanying the explanation of how to measure the height of eaves in the Technical Guidance¹ clearly shows the eaves height measured on the outside wall of the extension rather than the host property. When measured in this way the height of the proposed eaves exceeds what is permitted under Class A.1 i) and would therefore not be lawful.
8. Prior notification was granted under Reference 202754PALHE but this was on a mistaken understanding of the provisions of Class A.1 i). The development subsequently undertaken is only lawful if it is in fact permitted development under the provisions of the GDPO and meets all of the conditions and limitations, irrespective of whether there has been a prior notification. In this case, the proposed operations would not be permitted development under Schedule 2, Part 1 Class A, because it would not comply with Class A.1 i) in terms of the proposed eaves height.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single story rear extension was well-founded and that the appeal should fail. However, I find that the Council's refusal to grant an LDC in respect of rear roof extension and

¹ Page 12 of MHCLG's "Permitted development rights for householders - Technical Guidance (2019)"

installation of three roof lights to front roof slope was not well-founded and the appeal should succeed in part. I will exercise accordingly the powers transferred to me in section 195(2) and (3) of the 1990 Act as amended.

Zoë Frank

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 August 2020 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 proposed rear roof extension and three roof lights to front roof slope described in the First Schedule and shown on drawings Drawing Numbers: 2131.1 Rev A, 2131.2. Rev B and 2131.3.Rev A would be within the terms of Article 3 and Schedule 2, Part 2, Classes B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Zoë Franks

Inspector

Date 26th July 2021

Reference: APP/A5270/X/21/3266241

First Schedule

Rear roof extension and installation of three roof lights to front roof slope.

Second Schedule

Land at 494 Whitton Avenue West, Greenford, UB6 0EG

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 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:

by Zoë Franks, Solicitor

Land at: 494 Whitton Avenue West, Greenford, UB6 0EG

Reference: APP/A5270/X/21/3266241

Scale: Not to scale

