



Appeal Decision

Site visit made on 21 September 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2021

Appeal Ref: APP/Y5420/X/21/3273292

21 Berners Road, London N22 5NE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mustafa Chehabeddine against the decision of the London Borough of Haringey.
 - The application ref HGY/2020/2914, dated 12 November 2020, was refused by notice dated 7 January 2021.
 - The application was made under section 192(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is to convert a garage into a habitable room, adding new skylights and changing the garage door and adding new windows.
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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 use and operations which are found to be lawful.

Main Issue

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if begun at the date of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me.

Reasons

3. The proposal involves both a use and building operations. The Council does not dispute that the use would be lawful. However, it argues that the proposed operational development would be unlawful, as it comprises development as defined in s.55 of the Act, and because it would not benefit from the deemed permission granted under Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
4. Firstly, I consider that the works would amount to development. They would involve physical operations normally undertaken by a builder through the insertion of rooflights, windows and a new door. As a matter of planning judgement, I consider that the works would result in significant changes to the character and appearance of the building and that they would materially affect its external appearance.

5. Thus, the development requires the benefit of planning permission. Class A of the Order permits the enlargement, improvement or other alteration of a dwellinghouse. So, a preliminary matter to address is whether the appeal premises is "a dwellinghouse". The submitted plans do not tally with what I saw on my site visit. The property is nearing the end of some internal refurbishment and none of the rooms were furnished or occupied at the time of my visit. Moreover, rooms have been provided in the roof space which were not shown on the plans submitted with the application.
6. The submitted plans show 5 rooms which could be used as bedrooms, a shared bathroom and a kitchen which is open to another room which could be used as a living room or dining room. The layout as I saw it contained an additional room and en-suite bathroom in the roofspace and the room next to the kitchen had been separated from it by a door. Whilst it seems to me likely that the property has been refurbished to accommodate at least 6 persons, I need to address the position that existed at the time that the application was made, on 12 November 2020. The Council has not claimed that the layout shown on the plans was inaccurate at the time of making the application, and thus whatever changes have taken place since are not relevant to my consideration.
7. The Planning Practice Guidance says that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
8. The Council has no evidence to show that the property was not a dwellinghouse at the date of the application, and thus I consider on the balance of probabilities that the property was a dwellinghouse, and that the rights permitted under Class A of Part 1 of the Order were available.
9. The Council's Officer Report discusses the Order and sets out the various criteria that developments must meet. Only one criterion is considered by the Council to be in breach, that set out in paragraph A.1(f), which says that development is not permitted if subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height.
10. The Council argues that the garage is more than 3 metres beyond the rear wall of the dwellinghouse, and thus conflicts with this criterion. However, the criterion refers to the "enlarged part of the dwellinghouse". The proposal does not involve an enlargement, merely the alteration of the roof and front and rear elevations. No additional floorspace or volume would be created, as the existing structure would be utilised. Accordingly, the development would not conflict with this criterion, nor would it conflict with the other criteria of Class A, as acknowledged by the Council.
11. Accordingly, I find that the development proposed would, at the date of the application, be lawful as it would benefit from the deemed permission granted by the Order.

Other Matters

12. A neighbour has raised a number of matters which deal with the planning merits of the proposal. However, I am unable to take these into account as my sole remit is to determine the lawfulness of the proposal. Whether the garage is suitable for conversion to a habitable room is a matter covered by the Building Regulations.
13. I have determined the appeal on the basis of the evidence before me. Should any unlawful change of use occur from a dwellinghouse to a house in multiple occupation which falls outside of Class C4, any works to facilitate that unlawful change may be liable to enforcement action. Moreover, this determination does not relate to the rebuilding of the garage.

Conclusion

14. 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 a proposal to convert a garage into a habitable room, adding new skylights and changing the garage door and adding new windows 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 as amended to grant a certificate of lawful use or development.

JP Roberts

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 6 August 2020 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:

The development is permitted through the grant of a deemed planning permission granted under Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

JP Roberts

Inspector

Date 02 November 2021

Reference: APP/Y5420/X/21/3273292

First Schedule

To convert a garage into a habitable room, adding new skylights and changing the garage door and adding new windows.

As shown on the plans and particulars accompanying application HGY/2020/2914, dated 12 November 2020.

Second Schedule

21 Berners Road, London N22 5NE

See notes overleaf

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: 02 November 2021

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

Land at: 21 Berners Road, London N22 5NE

Reference: APP/Y5420/X/21/3273292

Not to scale



