



Appeal Decision

Site visit made on 25 November 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/Z5060/X/20/3264369

41 Cavendish Gardens, Barking, IG11 9DU

- 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 M Cranmer against the decision of London Borough of Barking and Dagenham Council.
 - The application ref 20/02044/CLUP, dated 16 October 2020, was refused by notice dated 30 November 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 loft conversion with hip to gable and rear dormer.
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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 found to be lawful.

Preliminary Matters

2. I saw on my site visit that building works were taking place and that a dormer extension has been added to the rear roof slope. The works that have been carried out do not reflect the proposed development for which the certificate is sought. As the certificate seeks a determination as to whether the works would be lawful on the date of application, the subsequent works that have been carried out do not have any bearing on my consideration of the appeal, which I have determined on the basis of the submitted details.
3. Section 192(4) makes it clear that the lawfulness of any operations for which a certificate is in force shall be conclusively presumed unless there is a material change before the operations are begun. Therefore, whether the proposed development would be lawful if it is built following the works that have been carried out is not a matter that is before me.
4. The Council considered that the proposed drawings did not show the existing first floor rear element. However, while Section A-A (drawing no 6749/2) does not indicate the existing rear extension, the elevations and floor plans, when read with drawing no 6749/1, are sufficiently clear to understand the extent of the proposed works.

Reasons

5. The certificate seeks to establish whether the proposed extension to the roof in the form of a hip-to-gable extension and a rear dormer would be lawful at the date of application. In an application for an LDC, the onus is on the applicant to

provide all the relevant information and evidence to support their case. The applicant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's deemed refusal to issue an LDC was well-founded or not.

6. The appellant considers that the development would be permitted development under Class B Part 1 Schedule 2 of the GPDO¹. Class B sets out that the enlargement of a dwellinghouse consisting of an addition or an alteration to its roof is permitted development. The permitted development right is subject to a number of limitations which are set out in paragraph B.1, and conditions in paragraph B.2.
7. The appeal site is a two storey end of terrace dwelling. From my observations of the site and the surrounding area, as well as planning history provided by the Council, it appears that a rear extension has been added to the original dwelling, with a pitched roof that has been joined to the original roof. The drawings show that in order to construct the rear dormer, the roof of the rear extension would be partially removed and replaced with a flat roof.
8. The Council refused the application as it considered that the changes to the roof of the rear extension would be a reduction rather than an enlargement of the dwelling and would therefore not fall within Class B. The main issue is therefore whether the works to the roof of the two storey rear extension are permitted development by virtue of Class B.
9. Class B permits enlargements consisting of alterations as well as additions. The term 'alteration' is not defined in the GPDO. In simple terms, an alteration is a change to something to make it different. I see no reason why it cannot include the removal of part of the existing structure. In my view, the removal of part of the pitched roof of the existing extension and its replacement with a flat roof is an alteration to the roof. Class B paragraph B.2 (b) indicates that roof enlargements can include works that affect an existing side or rear extension. The alteration to the existing roof is a necessary part of a single building operation that facilitates the proposed development. I therefore conclude that it falls within Class B.
10. I have seen no evidence that the proposal conflicts with any of the limitations set out in paragraph B.1, nor that it would fail to comply with any of the conditions set out in paragraph B.2. I therefore find that the development would benefit from the permitted development right set out in Class B of the GPDO.

Conclusion

11. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion with hip to gable and rear dormer 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.

N Thomas

INSPECTOR

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended



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 16 October 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 proposed operations are permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

INSPECTOR

Date: 17 December 2021

Reference: APP/Z5060/X/20/3264369

First Schedule

Loft conversion with hip to gable and rear dormer

Second Schedule

Land at 41 Cavendish Gardens, Barking IG11 9DU

IMPORTANT NOTES – SEE OVER

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, was 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: 17 December 2021

by N Thomas MA MRTPI

Land at: 41 Cavendish Gardens, Barking IG11 9DU

Reference: APP/Z5060/X/20/3264369

Scale: Not to Scale

