
Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/E5330/X/21/3279470

6 Meerbrook Road, Kidbrooke, London SE3 9QQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (The Act) 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 Razan Hassan against the decision of the Council of the Royal Borough of Greenwich (the LPA).
 - The application Ref 21/1946/CP, dated 26 May 2021, was refused by notice dated 21 July 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: Conversion of existing loft into habitable space incorporating rear dormer and front velux windows; erection of rear extension with raised platform not exceeding 300mm from existing ground level, and front porch.
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Decision

1. The appeal is dismissed in part (with regard to the erection of a rear extension with raised platform not exceeding 300mm from existing ground level) and is allowed in part (with regard to the conversion of the existing loft into habitable space incorporating rear dormer and front Velux windows and a front porch). See formal decision below.

Procedural matter

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the submissions. The appellant and the Council have not objected to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

Introduction and matters of clarification

3. An appeal relating to a LDC is confined to the narrow remit of reviewing the LPA's reasons for refusal and then deciding whether the reasons are well-founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none 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.

4. For this appeal application, as can be seen from the description above, the development for which a LDC is sought comprises three separate and distinctly severable parts. The first is the '*Conversion of existing loft into habitable space incorporating rear dormer and front Velux windows*'; the second is, the '*Erection of rear extension with raised platform not exceeding 300mm from existing ground level*, and the third is a '*front porch*'. These all need to be considered under the relevant parts of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended, (GPDO).

5. In refusing the LDC application the LPA set out 3 reasons for refusal (Rsfr).

1. The proposed rear single storey extension would be located within 2 metres of the boundary of the curtilage of the dwellinghouse and would be constructed with eaves to a height of more than 3m. Therefore, the proposed structure does not fall within the limits of permitted development as set out in Schedule 2, Part 1, Class A, Condition A.1(i) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

2. The proposed rear single storey extension contains a raised platform which does not fall within the limits of permitted development as set out in Schedule 2, Part 1, Class A, Condition A.1(k)(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

3. The submitted documents contain inconsistent information. As a result, it is not possible to fully assess and determine whether the proposed development complies with the relevant conditions, limitations or restrictions as detailed within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6. Clearly these only relate to the second part of the proposed works, the rear extension and raised platform. The Rsfr make no reference to the first part of the works, the conversion of the roof space, the dormer and the Velux windows or to the third part, the front porch. However, it is clear from the Officer's Delegated Report (ODR) that the proposed alterations and additions to the roof all comply with the relevant requirements and conditions set out in Class B and Class C of the GPDO and that the porch would comply with the requirements and conditions set out in Class D.

7. The legislation relating to applications for Lawful Development Certificate applications is set out in Section 193 of the Act. Section 193 (4) indicates that a certificate under Sections 191 or 192 (as in this case) may be issued:

- (a) for the whole or part of the land specified in the application, and*
- (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them.*

8. In this case, therefore, and because the three parts are clearly severable, I consider it necessary to consider whether or not each separate proposed operational development was lawful on the date of the application 26 May 2021. I am satisfied that in dealing with the appeal on this basis no injustice will be caused. I turn first to the rear extension and raised platform works.

Rear extension and raised platform not exceeding 300mm from existing ground level

9. Having considered the submitted plans I agree with the LPA that, in relation to this part of the proposal, they contain inconsistencies in that the ground levels are different on the proposed rear and side elevations; that the rear platform is not clearly shown on the floor or elevation drawings and that, from the floor level shown

for the extension, the platform appears as if it would exceed 300mm in height. In fact the rear elevational drawing shows just around four and a half courses of brickwork which would exceed 300mm. Thus, the information submitted in relation to this part of the works is neither precise nor unambiguous.

10. Furthermore, it would appear that the rear extension would be within 2m of the boundary and the height of the proposed eaves would exceed 3m. Again the submitted information is inconsistent since the heights indicated are between 3.49m and 3.14m and are different between the side and rear elevations. Again, therefore, the information provided with the application in relation to this part of the proposed works is neither precise nor unambiguous.

11. These proposed works are not permitted under Class A.1(j) of the GPDO because the enlarged part of the dwellinghouse would be within 2m of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3m in height. Nor would they be permitted under Class A.1(k) since it has not been demonstrated precisely and unambiguously that the raised platform would not exceed 300mm above the ground floor.

12. It follows that, in my view, the Council's decision to refuse a LDC for this part of the proposed development was sound and that the appeal must fail with regard to the rear extension and raised platform works. The appellant has not demonstrated precisely and unambiguously that these works were lawful on the date of the application, 26 May 2021.

Conversion of existing loft, rear dormer and front Velux windows

13. Class B of the GPDO allows '*the enlargement of a dwellinghouse consisting of an addition or alteration to its roof*'. Development is not permitted by Class B if certain requirements and conditions are not met. The LPA delegated report sets out the various requirements of the different sections of Class B. The report confirms that this part of the proposed works would comply with requirements, B.1(a) to B.1(h) inclusive. Having seen the submitted drawing I agree that this is the case and find no reason to disagree with the LPA.

14. I also agree with the LPA that the proposal would comply with conditions B.2(a); B.2(b)(i); (aa) and (bb); B.2(ii) and B.2(c) (i) and (ii). The proposal also complies with all of the requirements of Class C (C.1(a)(b)(c)(d) and (e) and C2(a) and (b) relating to '*Any other alteration to the roof of a dwellinghouse*'.

15. It follows, therefore, that in my view the LPA's decision not to grant a LDC for this part of the proposed development was not sound. I consider that the appeal should succeed in relation to the conversion of existing loft, rear dormer and front Velux windows and a lawful development certificate to this effect is attached.

The front porch

16. Class D of the GPDO allows '*the erection or construction of a porch outside any external door of a dwellinghouse*'. Again development is not permitted by Class D if certain requirements are not met. These requirements (D.1(a) to D.1(e) inclusive) are set out in the ODG and it is confirmed that this part of the works complies with all of the requirements. Having studied the proposed drawing in relation to the porch I agree with the LPA's conclusion.

17. Again, therefore, it follows that I consider the LPA's decision not to issue a LDC for the porch to be unsound and that the appeal should succeed with regard to this third part of the proposed works. The attached lawful development certificate,

therefore, also applies to the porch. For the avoidance of doubt it will be indicated on the certificate that it does not apply to the rear extension and raised platform. If the appellant wishes to proceed with this part of the works either full planning permission will need to be sought or a further LDC application made which complies with all of the requirements and conditions of Class A.

Formal Decision

18. The appeal is allowed in part in relation to (1) *'Conversion of existing loft into habitable space incorporating rear dormer and front Velux windows'* and (2) *'The erection of a front porch'*. A certificate is attached below.

19. Otherwise the appeal is dismissed in relation to *'the erection of a rear extension with raised platform not exceeding 300mm from existing ground level'*. A certificate for these works is refused.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 26 May 2021, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason: the operations were permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) under Schedule 2, Part 2, Class B and Class C (1) and Class D (2).

Signed

Anthony J Wharton Inspector

Date: 17 December 2021

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First Schedule

(1). Conversion of existing loft into habitable space incorporating rear dormer and front Velux windows and (2). The erection of a front porch

Second Schedule

6 Meerbrook Road, Kidbrooke, London SE3 9QQ

Notes:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted with the LDC application as follows: plan reference numbers 6MEER/BR/21 Nos 101 and 301, dated 14/5/2021 and Location Plan Scale 1:1250.

For the avoidance of doubt this certificate does not apply to that part of the works (referred to in the application and shown on the above plans) relating to the erection of a rear extension with raised platform not exceeding 300mm from existing ground level.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.