



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/N5660/X/21/3280247

24 Ivymount Road, LONDON, SE27 0NB

- 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 Matthew White against the decision of London Borough of Lambeth.
 - The application ref 21/01399/LDCP, dated 8 April 2021, was refused by notice dated 16 June 2021.
 - 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 construction of a loft conversion.
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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.

Procedural Matter

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both the appellant and the Council were contacted and given the opportunity to comment. Neither objected.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

4. The appeal relates to a two-storey end of terrace property. The appellant contends that the proposed development would be granted planning permission under Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which provides that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development (PD).
5. Development is permitted by Class B subject to conditions.

Condition B.1 states: -

(d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than -

(i) 40 cubic metres in the case of a terrace house.

6. The principal point at issue is the Council's determination that the proposal would not comply with the paragraph B.1.(d)(i) of Part 1 of Schedule 2 of the GPDO because the resulting roof space would exceed 40m³.
7. The Council has calculated that the resulting roof space would exceed the cubic content of the original roof space by 49.45m³. Following the Council's decision the appellant provided additional drawings¹ showing the step-by-step calculation process and contends that the overall increase would be 39.7m³.
8. The submitted plans show that there is an area where the side and rear dormers meet over the roof hip. Having regard to the way in which both parties have calculated the roof volume in this region, it is clear that the Council, in its calculation, have included it twice.
9. Having considered the appellant's calculations I am of the view that the proposed roof extensions would not exceed the original roof space by more than 40 cubic metres. Consequently, the proposal would comply with the GPDO in this respect.

Conclusion

10. 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 the construction of a loft conversion 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.

Elizabeth Jones

INSPECTOR

¹ Drawing Numbers V001-V003 titled 'Additional Volume Calculations' email dated 17 June 2021.

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 20 April 2021 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 development consisting of a loft conversion is “permitted development” falling within Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

Elizabeth Jones

Inspector

Date: 31 January 2022

Reference: APP/N5660/X/21/3280247

First Schedule

Construction of a loft conversion.

Second Schedule

Land at 24 Ivymount Road, LONDON, SE27 0NB

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, 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.

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: 31 January 2022

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Scale: Not to Scale

