



Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/E5900/X/20/3264052
51 Lockesfield Place, London E14 3AJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (1990 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 Mr Rakesh Patel against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/01941, dated 9 September 2020, was refused by notice dated 9 November 2020.
 - The application was made under sections 192(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use/development for which a certificate of lawful use or development is sought is the conversion of the roofspace and the installation of 2 east facing roof lights and 2 west facing roof lights.
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Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal¹ and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
2. Although the address of the site is stated as No 51 Lockesfield Place, the appellant confirms that he has acquired the roof space of No. 73 Lockesfield Place and that this roof space now forms part of No 51. The incorporation of the roof space of No 73 into No 51 has resulted in the creation of a single planning unit.

¹ In this context, a total of four representations have been received in relation to this appeal: three in support of the proposed development and one, from Councillor Golds, objecting to the proposal. However, because these representations all relate to the planning merits of the proposal, I am not able to take them into account.

3. The alteration of a roof of a dwellinghouse is permitted by Class C, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), subject to the limitations set out in Class C.1 and the conditions set out at Class C.2. The Council accepts that the proposed development accords with the limitations/conditions set out in Class C.1 and Class C.2. I see no reason to take a different view.
4. The Council does, however, take the view that because the GPDO specifically allows for a change between Class C3 (Dwellinghouses) and Class C4 (Houses in Multiple Occupation (HMO)) as defined in the Town and County Planning (Use Classes) Order 1987 (UCO) without the need for obtaining prior planning permission they are considered to fall into different categories. The Council therefore considers that the provisions within Class C, Part 1, Schedule 2 of the GPDO do not apply to HMOs, such that the roof lights proposed in this case are not permitted by the GPDO.
5. Although this is a matter that has not been examined by the Courts, Class C4 is defined in the UCO itself as use of a *dwellinghouse* by not more than six residents as a "house in multiple occupation" (emphasis added). It follows that, in order to qualify as a HMO for the purposes of Class C.4. of the UCO, the property must first be a dwellinghouse. There is no definition of the term 'dwellinghouse' in the 1990 Act but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
6. Part I, Schedule 2 of the GPDO permits development within the curtilage of a dwellinghouse. The provisions within Class C, which fall under the umbrella of Part 1, Schedule 2 of the GPDO, therefore relate to dwellinghouses in general. Given that a property in use as a HMO under Class C4 of the UCO is also a dwellinghouse, I consider that HMOs have the benefit of permitted development rights under Part 1, Schedule 2 of the GPDO. This includes the provisions within Class C of Part 1 relating to alterations to the roof of a dwellinghouse.
7. The Council accepts that Nos. 51 and 73 Lockesfield Place are both used as HMOs within Class C4 of the UCO. The use of that planning unit is described by the appellant as falling within Class C4 of the UCO, specifically the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO). By definition, the Council must also accept that these properties each provide all the facilities needed for day to day private domestic existence, and are therefore each dwellinghouses in their own right.
8. As indicated above, I consider that the incorporation of the roof space of No 73 Lockesfield Place into No 51 has resulted in the creation of single planning unit, all of which would be used as a HMO falling within Class C4 of the UCO. Furthermore, the property resulting from the incorporation of the roof space of No 73 Lockesfield Place into No 51 would benefit from all the facilities needed for day-to-day private domestic existence already present in the latter.
9. The roof lights (four in total) would therefore all be within the curtilage of a single dwellinghouse. Given that the proposed development of four roof lights would accord with the limitations set out in Class C.1 and the conditions set out at Class C.2, they would constitute permitted development for the purposes of Class C, Part 1, Schedule 2 of the GPDO.

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 conversion of the roofspace and the installation of 2 east facing roof lights and 2 west facing roof lights 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.

Formal Decision

11. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use and development which is found to be lawful.

Paul Freer
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 9 September 2020 the use and 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 roof lights would all be within the curtilage of a single dwellinghouse and would constitute permitted development for the purposes of Class C, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Paul Freer
INSPECTOR

Date: 15 February 2022
Reference: APP/E5900/X/20/3264052

First Schedule

The conversion of the roofspace and the installation of 2 east facing roof lights and 2 west facing roof lights.

Second Schedule

Land at 51 Lockesfield Place, London E14 3AJ

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: 15 February 2022

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Land at: 51 Lockesfield Place, London E14 3AJ

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Scale: Not to scale

