



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/T5150/X/21/3288837
140 Salmon Street, London NW9 8NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Dr Gaurav Mukerji against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/3123, dated 10 August 2021, was refused by notice dated 13 October 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 'loft conversion with hip to gable conversion and new rear dormer'.
 - **Summary of 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.**
-

Preliminary Matters

1. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the point in dispute.
3. I have noted the discrepancy between the proposed front elevation and roof plan, in that there are three rooflights shown on the elevation and only two on the plan.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain conditions and limitations.

6. The Council's sole reason for refusal as given in the decision notice, is that the proposed development does not comply with the requirements of the GPDO and is not permitted development. From the officer report it is evident that the Council's reason for refusing the application is that they consider the proposed development would go beyond an *addition or alteration* and would therefore not be permitted by virtue of Class B.
7. Whilst in their officer report there is also reference to the proposed development not being within the curtilage of the dwellinghouse, there is no explanation for this view. Since the proposed development would take place above the eaves of the house, I find it would be within the curtilage of the dwellinghouse.
8. There is no suggestion that the proposed development would not accord with the criteria set out in Classes B, C and G of the GPDO and I have no reason to take a different view. The matter in dispute is therefore whether the development would amount to either an *addition or alteration* to the roof. The GPDO does not define *addition* and *alteration* and it therefore follows whether the proposal amounts to an *addition or alteration* is a matter of fact and degree.
9. In this case, based on the submitted drawings, I note that two chimneys would be demolished, and the side slopes of the main roof would be removed to accommodate the hip to gable enlargements and crown (flat) roof. However, the roof over the bay window and front roof slope would be retained. Part of the existing rear roof slope would be retained with some being removed to accommodate the addition of the proposed dormer. The appellant confirmed that the existing front roof slopes and internal support structures would be retained and that only a section of the rear roof slope would be removed to install the dormer, retaining the eaves and a section of roof slope above, as well as the ridgeline.
10. It seems to me that a hip to gable enlargement would almost always result in what could be termed remodelling of a roof, in that the form is changed. Whilst no detailed plans showing the amount of demolition have been provided, based on the appellant's submissions, given the extent of the existing roof and its supporting structure that would be retained, I find that the proposed development would constitute an addition or alteration.
11. The Council referred to another appeal decision¹ in support. However, it seems in that case the proposal included a first-floor extension, and the development would have resulted in the majority of the rear roof being one large expanse of flat roof. Based on the evidence before me, I do not consider that case is comparable.
12. Having regard to the above, I am satisfied that on the balance of probability the development proposed would constitute the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. As such it would constitute permitted development by virtue of Schedule 2 Part 1 Class B of the GPDO.

¹ APP/T5150/X/20/3247496

Conclusion

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

FORMAL DECISION

14. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed works which are considered to be lawful.

Felicity Thompson

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 10 August 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 proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) Schedule 2 Part 1 Class B, Class C and Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) since the development falls within Part 1 Classes B, C and G of the GPDO.

Signed

Felicity Thompson

INSPECTOR

Date: 28 March 2022

Reference: APP/T5150/X/21/3288837

First Schedule

Loft conversion with hip to gable conversion and new rear dormer, as shown on drawings numbered 140SALMONSTREET -001, -002, -003, -004, -005, -006, -007.

Second Schedule

Land at 140 Salmon Street, London, NW9 8NT

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: 28 March 2022

by **Felicity Thompson BA(Hons) MCD MRTPI**

Land at: 140 Salmon Street, London NW9 8NT

Reference: APP/T5150/X/21/3288837

Scale: Not to scale

