

Appeal Decision

Site visit made on 23 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

APP/A5840/X/21/3283694 **18 Elfindale Road, London SE24 9NW**

- 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 by the London Borough of Southwark Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Forbes Bailey.
- The application, reference 21/AP/0811, was received on 9 March 2021. It was refused by a notice dated 30 April 2021.
- The development for which a certificate of lawful use or development was sought was for the construction of a dormer roof extension over the rear outrigger and the replacement of one rooflight on the rear flat roof at 18 Elfindale Road, London SE24 9NW.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness for the proposed dormer roof extension.

Summary of decision: A certificate of lawfulness is issued.

Costs application

1. The Appellant, Mr Forbes Bailey, made an application for a full award of costs against the Council. That application is the subject of a separate decision.

Appeal proposal

2. No. 18 Elfindale Road is a two storey mid terraced single family dwellinghouse. The appeal project was described as the construction of a dormer roof extension over the rear outrigger and the replacement of one rooflight on the rear flat roof.

Council's case

3. The Council's reason to refuse to issue a certificate of lawfulness was because the proposal did not comply with limitations and conditions in Class B at Condition B.2(b)(i)(bb), Schedule 2, Article 3, Part 1 (Development within the curtilage of a dwellinghouse) of the Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order). Condition B.2 (b)(i)(bb) that states "the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves". In this case, the dormer would not be set back 0.2 metres from the eaves on the outrigger.

4. The Council said the condition was applied as written, taking into consideration page 11 of the Permitted Development Rights for Householders Technical Guidance by the Ministry of Housing, Communities and Local Government. That said "the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall".

Inspector's considerations

5. The Council accepted what they described somewhat unclearly as 'some inconsistently in the way that the tests of the Order have been applied'. It appears the Council are now applying a more restrictive view on the application of Condition B.2(b)(i)(bb). I consider the Council's interpretation of the Order limitations as applied to the present case to be incorrect.
6. The Technical Guidance states that, for B.2(b)(i), the measurement of 0.2m should be made along the original roof slope from the outermost edge of the eaves, (the edge of the tiles or slates), to the edge of the enlargement. Any guttering that protrudes beyond the roof slope should not be included in this measurement. The associated diagram on p36 of the Guidance shows that the measurement should be made to the eaves at the bottom of the roof, not where a bargeboard might run up the slanted edge of a hip or gable end. The outer edge of the roof slope over a gable wall is generally known as a rake, not an eave.
7. In any event, B.2(b) exempts a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension from the requirement to set the enlargement back by 0.2m. The exemption exists because it would not be possible to maintain the eaves where a dormer straddles the main part of the house and extension. There is also no requirement to set the dormer in by 0.2m from the gable end of the extension.
8. The Council referred to the Technical Guidance at (d) on page 11 the statement: "For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall.". But that does not define 'eaves' for the purposes of Condition B.2(b)(i)(bb). It is for the purpose of measuring the height of the eaves from the ground in - Class A.1(d). It appears the Council have assumed that a gable wall junction with a roof slope, where a barge board might be fitted, also known as a rake, is part of the eaves of the dwelling for the purposes of Condition B.2(b)(i)(bb), (a rake of a roof is the exposed portion on the sides of a gable roof that extends from the eave to the ridge of the sloped sides). If the Council were right, it would mean that the outer side wall of a dormer would have to be 0.2m set in from the outer edge of any barge board to the top edge of a gable wall. That might produce a better look than a dormer flush or virtually flush with a gable wall. But such a limitation is not to be found in the Order. The only restriction that might be applied to the outside face of a dormer is condition B.2(b)(ii) which says that no part of the enlargement must extend beyond the outside face of any external wall of the original dwellinghouse.

9. There were no other aspects of the dormer extension proposals which the Council said failed to meet the limitations and conditions of Class B of Schedule 2 of the Order.

Conclusion

10. I consider the Council's interpretation of the Order limitations as applied in the present instance to have been incorrect. The Applicant's project for extensions at No. 18 Elfindale Road would be development permitted by the Order. A certificate of lawful development is issued.

FORMAL DECISION

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the construction of a dormer roof extension over the rear outrigger and the replacement of one rooflight on the rear flat roof at 18 Elfindale Road, London SE24 9NW was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 30 April 2021 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would be lawful within the meaning of section 192(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of a dormer roof extension over the rear outrigger and the replacement of one rooflight on the rear flat roof at 18 Elfindale Road, London SE24 9NW would be lawful by virtue of Class B, Schedule 2, Article 3, Part 1 (Development Within the Curtilage of a Dwellinghouse) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

John Whalley

INSPECTOR

Date: 4 April 2022

Reference: APP/A5840/X/21/3283694

First Schedule

The construction of a dormer roof extension over the rear outrigger and the replacement of one rooflight on the rear flat roof to the dwelling.

Second Schedule

The dwelling at 18 Elfindale Road, London SE24 9NW.

IMPORTANT NOTES OVERLEAF

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule would be lawful, on the certified date and, thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

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The dwelling at 18 Elfindale Road, London SE24 9NW



Plan attached to the Lawful Development Certificate – Scale on drawing

John Whalley

INSPECTOR