



Appeal Decision

Site visit made on 2 August 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/B5480/X/21/3276487

2 Lingfield Avenue, Upminster RM14 2PE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ('the Act') and is made by Mr Christopher Nugent against the decision of the Council of the London Borough of Havering to refuse to grant a certificate of lawful use or development (LDC).
- The application, ref D0102.21, dated 17 February 2021, was refused by notice dated 15 April 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which an LDC is sought is a loft conversion including a hip to gable roof, rear dormer window and roof lights with the removal of the pitched roof over the existing ground floor rear projection.

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 form described the development as "loft conversion designed to permitted development requirements". However, I find the wording of the Council's decision notice, set out in the header above, to be a more detailed description and I shall consider the appeal accordingly.
2. The application sought an LDC for proposed operations but the alteration of the hipped roof to a gable roof appears to be largely, if not substantially, complete. I shall therefore consider the appeal as seeking an LDC for operations already carried out.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the building operation of converting the loft, including a hip to gable roof, rear dormer window and roof lights, with the removal of the pitched roof over the existing ground floor rear projection, would have been lawful if begun on the date of the application.

Reasons

4. Under section 191(2) of the Act an operation is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice in force. None of the operations are the subject of an enforcement notice, so it remains to be considered whether they would have been immune from enforcement action, and thus lawful, if begun on the date the application was made.

5. Lawfulness is claimed on the basis that the operations were granted planning permission by reason of Article 3(1) and Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') when the application was made.

The hip to gable roof and the rear dormer window

6. Class B of Part 1 of Schedule 2 to the Order permits "the enlargement of a dwellinghouse consisting of an addition or alteration to its roof". That is subject to the limitations within paragraph B.1. Only one such limitation, (d), is in play in this appeal. It states that development is not permitted by Class B if "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, or (ii) 50 cubic metres in any other case."
7. Paragraph B.3 confirms that 'resulting roof space' means, in Class B, "the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not."
8. Of themselves, the hip to gable alteration and the rear dormer increase the volume of the roof space above that of the original roof space by more than the maximum 50 cubic metres allowed for a semi-detached dwellinghouse by limitation (d). However, the appellant contends this increase should be offset by a reduction achieved by the concurrent alteration of the kitchen roof by replacing a section of pitched roof with a flat roof. If that offset were applied, the net increase would not exceed 50 cubic metres.
9. For the alteration of the kitchen roof to influence whether the hip to gable alteration and the rear dormer are permitted by Class B, it must itself be a form of development subject to Class B or which Class B allows to be taken into consideration. While it is evidently an alteration to the roof of the dwellinghouse, the permission granted by Class B is limited to an alteration that is also an enlargement of the dwellinghouse.
10. The project comprising the hip to gable alteration, the rear dormer, and the alteration of the kitchen roof results in a net enlargement of the roof space. However, the wording of Class B does not provide support for project-based assessment, as opposed to the consideration of each addition or alteration to the roof space on its facts. Viewed in this way and noting that paragraph B.3 is only explicit that an enlargement to the original roof space may be taken into account, the alteration of the kitchen roof cannot be considered.
11. Furthermore, Article 2 of the Order confirms that 'original' means a building as it existed on 1 July 1948 or, if built on or after that date, "as so built". It is therefore the cubic content of that original roof space, not just the parts that would remain after the kitchen roof is altered, that must be considered for the purposes of Class B.
12. For these reasons, the alteration of the kitchen roof is not a form of development permitted by Class B and is not an enlargement to be taken account of when considering an addition or alteration to the roof that is subject to that Class. Consequently, the resulting roof space brought about by the addition of the hip to gable alteration and the rear dormer cannot be offset and exceeds the original roof space by more than 50 cubic metres. It is therefore

not development permitted by Class B and would not have been lawful if begun on the date the application was made.

The roof lights

13. The 2 roof lights are inserted in the principal roof plane, facing Lingfield Avenue. While one is entirely set within part of the original roof, the other, furthest from the boundary with 4 Lingfield Avenue, is partly set within the roof area formed as part of the alteration of the hipped roof to a gable roof. That roof light is therefore an integral part of the development which I have found would not have been lawful if begun on the date the application was made.
14. Class C of Part 1 of Schedule 2 to the Order (Class C) permits “any other alteration to the roof of a dwellinghouse”, subject to the limitations of paragraph C.1. None of the limitations set out in that paragraph has been identified as applying to the roof light closest to the boundary with 4 Lingfield Avenue. That roof light is therefore permitted by Class C and would have been lawful if begun on the date of the application.

Conclusions

15. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant an LDC in respect of the hip to gable alteration, including the roof light furthest from the boundary with 4 Lingfield Avenue, and the rear dormer was well-founded.
16. Section 193(4)(a) of the Act allows that where an application specifies two or more operations, an LDC may be issued for all of them or some one or more of them. Accordingly, I also conclude that the Council’s refusal to grant an LDC in respect of the roof light closest to the boundary with 4 Lingfield Avenue was not well-founded and that the appeal should succeed to that extent. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

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

Mark Harbottle

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 17 February 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red/black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The insertion of the roof light closest to the boundary with 4 Lingfield Avenue in the principal roof plane is permitted development pursuant to Article 3 and Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Mark Harbottle

Inspector

Date: 6 September 2022

Reference: APP/B5480/X/21/3276487

First Schedule

The alteration to the roof of the dwellinghouse comprising the insertion of the roof light closest to the boundary with 4 Lingfield Avenue in the front roof plane, as shown on drawings P0000/06B, 07B, 08B, 09B, 10B and 11B.

Second Schedule

2 Lingfield Avenue, Upminster RM14 2PE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 September 2022

by Mark Harbottle BSc MRTPI

Land at: 2 Lingfield Avenue, Upminster RM14 2PE

Reference: APP/B5480/X/21/3276487

Scale: Not to Scale

