
Appeal Decision

Site visit made on 14 September 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/E5330/X/22/3295416
84 Calvert Road, London SE19 9DF

- 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 in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr M Edwards against the decision of Royal Borough of Greenwich Council.
- The application Ref 21/4427/CP, dated 10 December 2021, was refused in part by notice dated 4 February 2022.
- 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 the erection of a ground floor single storey and loft extension to the rear of the property.

Summary 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 description of the proposal found in the Council's decision notice differs from that above, referring to the proposal as a loft extension with a rear outrigger dormer. This is also how it is described in the appeal form. The application plans are annotated to say that the ground floor extension is not part of the application. Thus I consider the proposal as described by the Council's decision notice, namely for a loft extension with a rear outrigger dormer.
2. The Council's decision notice purports to certify that the development 'would not have been lawful' on the relevant date. As this amounts to a certificate of sorts I shall treat the appeal as being against a refusal in part.
3. The Council's decision notice took issue with the proposed external materials to be used in the extension as not being similar in appearance to the existing, as is required by a condition of the Town and Country Planning (General Permitted Development) (England) Order 2021. Amended plans were submitted with the appeal to seek to overcome this aspect.
4. The Council were asked specifically to comment on whether those amended plans addressed that particular reason for refusal. The Council confirmed that they were content for the amended plans to be considered in the appeal, and further that they overcame that particular reason for the Council's finding that the proposed development would not be lawful.

Main Issues

5. The question in issue is whether the proposed development benefits from a planning permission granted by the General Permitted Development Order. The Council's original position was that it does not, for two reasons; first, that it does not consist of materials similar in appearance to those of the original dwellinghouse, as required by the Order; and secondly, that the original rear outrigger side eaves are not being reinstated and a 0.2m setback not provided. As noted above, the first issue has been overcome by the submission of amended plans, and thus the outstanding main issue in the appeal concerns whether a 0.2m setback is required.

Reasons

6. Development consisting of the enlargement of a dwellinghouse by altering or adding to its roof is generally permitted by article 3 and Schedule 2 of the General Permitted Development Order, specifically by Class B of Part 1. The permission is subject to a number of conditions, including that (as relevant) the edge of the enlargement closest to the eaves of the original roof is, *so far as practicable*, not less than 0.2m from the eaves. Technical Guidance issued by the Department indicates that this 'practicability' test concerns practical or structural considerations.
7. The Council have not considered whether it is impracticable to achieve a 0.2m setback, but find in their officer's report that the development is not compliant with the Order merely because the setback is not provided. The appellant has offered a number of reasons why achieving the setback is impracticable, including that new beams would be required because the second floor walls could not sit atop the existing first floor ones; this would consequently reduce the ceiling height to below 2m; it would require considerable additional cost because it would require cranes over the house to install the new beams; and it would achieve an unduly small living space in the room to be created.
8. Whilst the appellant does not contend that a scheme to achieve a 0.2m setback would be impossible, this is not the relevant test. I observed on the site that the existing first floor room to the rear is already a small one, with a limited ceiling height. The works that would be required to achieve a setback would compromise both this space and that of the proposed room above such that unsuitable living conditions for the occupants would result. Whilst estimated costs of the works are not before me for consideration, the requirement to crane new beams over the house to achieve a setback appears to me disproportionate in view of the limited size of the extension to be created.
9. On balance, and in the absence of any competing view from the Council as to the practicability of achieving a 0.2m setback, I accept the appellant's case and agree that it would be impracticable to achieve that setback. For this reason the relevant condition in the Order is met and the Council's refusal in this regard was not well-founded.
10. As there are no other outstanding issues in the case, for the reasons given above I conclude on the evidence now available that the Council's refusal in part to grant a certificate of lawful use or development in respect of a proposed loft extension with a rear outrigger dormer to the rear of the property 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 proposed operations which are considered to be lawful.

Laura Renaudon

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 December 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations would have been permitted by the Town and Country (General Permitted Development) (England) Order 2015 (as amended).

Signed

Laura Renaudon

Inspector

Date: 30 September 2022

Reference: APP/E5330/X/22/3295416

First Schedule

Construction of a loft extension with a rear outrigger dormer as depicted on plans and drawings SDNA/352/100, SDNA/352/101, SDNA/352/102, SDNA/352/105, SDNA/352/106, SDNA/352/107, SDNA/352/202A REV B, SDNA/352/203A REV B, SDNA/352/205A REV B, and SDNA/352/206A REV B and as amended by drawings SDNA/352/205 rev H and SDNA/352/208 rev H.

Second Schedule

Land at 84 Calvert Road, London SE10 0DF

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.