



Appeal Decisions

Site visit made on 11 October 2022

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

APP/Q5300/X/21/3270589

148 South Lodge Drive, London, N14 4XL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ahmad Zein Elabdein against the decision of the Council of the London Borough of Enfield.
 - The application ref 21/00046/CEA, dated 22 December 2020, was refused by notice dated 4 March 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 a loft conversion with rear dormer and front skylights, a main roof profile change from hip to gable and a change of roof profile over the side extension.
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Decision

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

Reasons

2. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether, at the time of the application, the proposed works would have constituted permitted development (PD) and therefore granted planning permission by Article 3 and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The planning merits of the proposal are not relevant.
3. The property is a semi-detached dwelling with a hipped main roof and a hipped roof on its two-storey side extension. The development would consist of a dormer extension to the rear of the roof and also the building up of the side gable resulting in the roof becoming gabled rather than hipped. In addition, the hipped roof of the side extension would be removed and replaced with a flat roof.
4. The GPDO by way of Article 3 grants planning permission for a range of developments within the curtilage of a dwellinghouse, as set out in Part 1 of Schedule 2. Class B of Part 1 grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain limitations contained in paragraph B.1. All limitations must be satisfied. The disputed limitation is criterion (d) which says development is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than ... (ii) 50 cubic metres.

5. The Council accepts that the loft conversion, when looked at in isolation, would not exceed 50 cubic metres. However, the Council argues that it would not be PD because the existing roof on the side extension should be added to this figure, as it is not part of the original roof space.
6. However, I do not accept the Council's position in this respect. The proposed development is put forward as a single project and must be considered as a whole. As the side extension roof would be removed as part of the overall operation, it cannot form part of the calculation of the resulting roof space as it would no longer exist. i.e., the *resulting* roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres.
7. The Council also says that the replacement of the hipped roof on the existing side extension with a flat roof is development requiring planning permission as it would materially affect the appearance of the building. However, Class B grants permission for *additions etc to the roof of a dwellinghouse*. Therefore, the question is whether the alterations would constitute development permitted under that Class. Class B does not preclude development that materially affects the appearance of the dwelling. Therefore, the replacement of a hipped roof with a flat roof, as part of the development as a whole, is encompassed within these PD rights.

Conclusion

8. 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 was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant a certificate as applied for.

Ms Watson

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 22 December 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and highlighted 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:

Carried out concurrently as a single development, the loft conversion with rear dormer and front skylights, a main roof profile change from hip to gable and a change of roof profile over the side extension complies with Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Ms Watson

Inspector

Date: [18 October 2022]

Reference: APP/Q5300/X/21/3270589

First Schedule

The loft conversion with rear dormer and front skylights, a main roof profile change from hip to gable and a change of roof profile over the side extension.

Second Schedule

Land at 148 South Lodge Drive, London, N14 4XL

Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 October 2022

by Ms Watson BA(Hons), MCD, MRTPI

Land at: 148 South Lodge Drive, London, N14 4XL

Reference: APP/Q5300/X/21/3270589

Scale: Not to Scale



IMPORTANT NOTES – SEE OVER

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.