
Appeal Decision

Site visit made on 14 November 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/E5330/X/21/3272102
140 Earlshall Road, London SE9 1PN

- 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 Mr Grant Doyle against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/0359/CP, dated 28 January 2021, was refused by notice dated 26 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 described as a "Loft conversion into habitable space incorporating rear Dormer and Velux lights at 140 Earshall Road London SE9 1PN".
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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.

Preliminary Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the loft conversion with rear Dormer and Velux lights would be granted planning permission by Article 3, Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

4. Subject to limitations and conditions, Class B of Schedule 2, Part 1 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, and Class C of Schedule 2, Part 1 of the GPDO permits other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the rear dormer and Velux windows, would be granted permission by virtue of Class B and C. Paragraph B.1 and B.2, and C.1 and C.2 sets out the limitations and conditions which proposals must adhere to benefit from permitted development rights.
5. There is no dispute between the parties that the development falls to be considered under Classes B and C. Nor is there any dispute that the development would adhere to the limitations set out at paragraph B.1 (a) through to (f), the conditions set out at paragraph B.2 (a) through to (c) and the limitations and conditions set out at paragraphs C.1 and C.2. I have found no reason to disagree with these findings.
6. The Council determined that they identified inconsistencies with the accuracy of the red line boundary on the drawings, which they state appears to cross over the boundary with 142 Earlshall Road. The Council state that the proposed development is not contained entirely within the curtilage of a dwellinghouse, and therefore falls outside of the limits of permitted development as set out in Classes B and C of Schedule 2, Part 1 of the GPDO. However, from my reading of the plans the red line does not appear to cross the boundary with No 142, and this was further confirmed by my observations during the site visit.
7. I therefore find no conflict against the relevant limitations and conditions of Article 3, Schedule 2, Part 1, Classes B and C of the GPDO.

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 in respect of the "loft conversion into habitable space incorporating rear dormer and Velux lights" was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Satheesan

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 28 January 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 development is "permitted development" falling within Classes B and C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

R Satheesan

INSPECTOR

Date : 18 November 2022
Reference: APP/E5330/X/21/3272102

First Schedule

Loft conversion into habitable space incorporating rear Dormer and Velux lights

Second Schedule

Land at 140 Earlshall Road, London SE9 1PN

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: 18 November 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

Land at: 140 Earls Hall Road, London SE9 1PN

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Not to scale.



