



Appeal Decision

Site visit made on 1 November 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2022

Appeal Ref: APP/N5090/X/22/3293764

125 Bow Lane, North Finchley, London N12 0JL

- 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 Ms Shirli Gilbert against the decision of London Borough of Barnet.
 - The application ref 21/3453/192, dated 22 June 2021, was refused by notice dated 5 October 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 roof extension including hip to gable, rear dormer window and 4no. rooflights to front roofslope.
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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 Matter

2. The description of development given on the application form refers only to a rear dormer, however the decision notice, appeal form and planning appeal statement all additionally refer to a hip to gable extension and 4 rooflights. The full scope of this work is also shown on the plans that have been provided. It is therefore evident that the Council and appellant are in agreement with respect to the scope of the works proposed and the modified description. I have therefore used that description in the banner header above.

Main Issue

3. The main issue is whether the proposed roof extension including hip to gable, rear dormer window and 4no. rooflights to front roofslope would be lawful due to the provisions of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This turns firstly on whether the two storey rear and side outrigger existed on 1st July 1948 and therefore whether it forms part of the original dwelling and secondly on how far the development would be set back from the eaves.

Reasons

4. In an appeal relating to a lawful development certificate, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The appellant's own evidence does not have to be corroborated by "independent" evidence, and if there is no evidence to

- contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
5. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. This class includes various limitations and conditions, against which the Council raises no concerns in terms of what is proposed. However, they consider that it has not been demonstrated that the two storey rear and side outrigger is part of the original building. In cases where a building predates 1st July 1948, the original building is defined by the GDPO as being as it existed on that day, which can therefore include any extensions that had already been made at that time.
 6. This is of importance because the Council state that the works subject to the lawful certificate application would increase the roof space by 39.9 cubic metres. Class B paragraph 1(d) only allows a total roof space increase of 40 cubic metres in the case of a terrace house. If the rear and side outrigger was not part of the original dwelling as defined by the GDPO, its roof space would need to be counted cumulatively with the additional roof space of the proposal that is subject to this appeal. In such a scenario the 40 cubic metre limit would be exceeded and the proposal would not be permitted development.
 7. The appellant has provided an extract from an Ordnance Survey map from 1938 which shows that there was built form of some type in the location of the two storey rear and side outrigger, but its plan form nature is not able to provide detail of the height of what was there. However, aerial photographs dating from 1926 and 1945 offer further information in that respect.
 8. Whilst the picture quality of these two photographs reflects the period during which they were taken, the photograph dating from 1926 is sufficiently clear to show that the rear part of the outrigger existed and was two storey in height at that time.
 9. The areas of shading on the photograph from 1945 suggest that the side outrigger was also of two storey height at that point, as its front roof plane is not in shadow. If it had been only single storey in height, it is likely that this roof plane would have been in shade from the rest of the two storey dwelling. The fact that the brickwork of the side elevation of the side outrigger is consistent in material and appearance for its full height gives additional weight to the proposition that the outrigger was built to two storeys in height when constructed.
 10. Other evidence provided by the appellant includes the fact that the brickwork of the side outrigger is seamlessly 'keyed' into the brickwork of the rear outrigger, although this is not conclusive on its own. However, it does lend further weight to the likelihood of the rear and side outriggers being contemporaneous with one another, being two storeys in height when built and being present in that form on 1st July 1948.
 11. The decision notice also states that it was not demonstrated that the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves, as is a condition of Class B paragraph 2.(b)(i)(bb). However, the Council have measured this distance directly back from the wall edge as opposed to taking the approach set out in the Permitted

development rights for householders Technical Guidance 2019, which is to measure along the roof slope. It is therefore probable that even on the Council's measurement of 0.18m from the wall edges, the distance along the roof slopes would be at least 0.2m. But, in any event, the appellant has provided a drawing with the appeal confirming that there would be 0.2 metre setbacks from the wall edges.

12. Taken together, the evidence provided demonstrates that on the balance of probability the two storey rear and side outrigger existed on 1st July 1948 and therefore forms part of the original dwelling. It has also been demonstrated that the proposal would be set in 0.2 metres from the eaves. The proposed operation would therefore comply with the requirements of Schedule 2 Part 1 Class B of the GDPO. The Council's delegated report makes reference to the proposed rooflights in the context of Class C of the GDPO and finds no conflict with the limitations and conditions of that class.

Conclusion

13. 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 a roof extension including hip to gable, rear dormer window and 4no. rooflights to front roofslope 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.

Graham Wraight

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 June 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 proposed development complied with the provisions of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 on 22 June 2021.

Signed

Graham Wraight
Inspector

Date: 06 December 2022
Reference: APP/N5090/X/22/3293764

First Schedule

Roof extension including hip to gable, rear dormer window and 4no. rooflights to front roofslope.

Second Schedule

Land at 125 Bow Lane, North Finchley, London N12 0JL

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 December 2022

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Scale: Not to Scale

