
Appeal Decisions

Site visit made on 19 December 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal A: Ref APP/E5330/X/22/3290044

38 Eltham Park Gardens, Eltham SE9 1AW

- 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 S Lark against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/3724/CP, dated 16 October 2021, was refused by notice dated 8 December 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 hip to gable loft conversion with rear dormer.
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Appeal B: Ref APP/E5330/W/22/3290042

38 Eltham Park Gardens, Eltham SE9 1AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Lark against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/3723/HD, dated 16 October 2021, was refused by notice dated 8 December 2021.
 - The development proposed is single storey rear extension and lean-to roof to existing flat roof outrigger extension.
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation considered to be lawful.
2. Appeal B is allowed and planning permission is granted for single storey rear extension and lean-to roof to existing flat roof outrigger extension at 38 Eltham Park Gardens, Eltham SE9 1AW in accordance with the terms of the application, Ref 21/3723/HD, dated 16 October 2021, subject to conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
 - 3) The materials to be used for the external surfaces of the development hereby permitted shall match those of the existing building. All new works and works of making good to the retained fabric shall be finished to match the adjacent work unless otherwise stated on the approved drawings and retained for the lifetime of the development.

Appeal A

Main Issue

3. The main issue is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

4. Article 3(1) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) provides general planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions.
5. The officer report (OR) on the application calculates the cubic content of the resulting roof space to exceed that of the original roof space by more than 50 cubic metres (51.67m³), causing it in the Council's view to fall foul of limitation B.1.(d)(ii) in respect of the semi-detached property. However, the basis for the dimensions used in the report to arrive at this figure is unclear, particularly as the dimensions cited conflict with annotations on 'Drawing No 14 PD' which provide certainty as to what is proposed. The dimensions as annotated on the drawing are not inconsistent with my own understanding of the plans, and the appellant's rationale behind his calculation using those dimensions (resulting in an increase of 49.81m³) has not been challenged during the appeal by the Council (which has not provided any appeal statement in addition to the OR, nor commented upon the appellant's statement). Accordingly, I find that the proposal complies with B.1.(d)(ii).
6. The LDC was also refused by the Council on the basis that the proposed dormer would include full length windows, which would not have a similar visual appearance to the application site. The decision notice says that, therefore, the proposed development fails to comply with condition criteria B.2(a) of Class B. However, it is clear to me that the size and shape of the fenestration serving the appeal dwelling is varied with rear ground floor patio doors of a similar visual appearance to the dormer windows proposed.
7. Accordingly, I find that the appeal development benefits from Class B permitted development rights, and that none of the associated limitations and conditions (those raised by the Council or any other) cause what is proposed to be unlawful.

Conclusion on Appeal A

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 hip to gable loft conversion with rear dormer 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.

Appeal B

Main Issue

9. The main issue in the appeal is the effect of the proposal on the character and appearance of the dwelling and local area.

Reasons

10. The Council has concerns about the scale and bulk of the development, but it is not very much different in those regards than many rear extensions that have been built locally, and significantly in the case of the appeal scheme it falls somewhat short of extending past the existing extended outrigger. Consequently, the proposed addition to the building would not appear disproportionate and would be seen as subordinate to the host dwelling.
11. It is true that the depth of the extension exceeds what is encouraged by the Council's Residential Extensions, Basements and Conversions Guidance Supplementary Planning Document (SPD) (Dec 2018) but the presence of the existing rear projection has a bearing on the application of that guidance. In any respect, the 3.6m figure is said to be associated with a likelihood of restricting light to neighbouring properties and the officer report makes clear that the development would not have an unneighbourly effect on those properties due to their own single storey rear extensions/projections and separation distance.
12. Therefore, the proposal would cause no harm to the character and appearance of the dwelling and local area. Accordingly, there would be no conflict with Policy D3 of The London Plan (March 2021) and Policies DH1 and DH(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (July 2014) as supported by the SPD.

Conclusion on Appeal B

13. The development complies with the development plan as a whole, and there are no other considerations which outweigh that finding. Accordingly, I will grant planning permission for the development.
14. In addition to the commencement condition, it is necessary to impose a condition requiring external materials to match the existing dwelling to safeguard the character and appearance of the host dwelling and area. In the interests of proper planning and to avoid doubt, it is necessary to stipulate that the development shall be carried out in accordance with the approved plans.

Andrew Walker

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 dated 16 October 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 benefits from general planning permission afforded by Article 3(1) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Andrew Walker

Inspector

Date: 11 January 2023

Reference: APP/E5330/X/22/3290044

First Schedule

Hip to gable loft conversion with rear dormer

Second Schedule

Land at 38 Eltham Park Gardens, Eltham SE9 1AW

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: 11 January 2023

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

Land at: 38 Eltham Park Gardens, Eltham SE9 1AW

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Scale: Do not scale

