



Appeal Decision

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/U5930/X/22/3301710
86 Acacia Road, Walthamstow E17 8BW

- 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 Aaron Chapman against the decision of the Council of the London Borough of Waltham Forest (the LPA).
 - The application Ref 220811, dated 17 March 2022, was refused by notice dated 31 May 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 box dormer extension to a loft bedroom and additional rooflights in the main roof.
-

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 considered to be lawful.

Main Issue

2. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

3. The appeal site comprises a two-storey, terraced dwelling. The proposal would involve the erection of an extension to an existing dormer on the rear roof slope of the property. The extension would project outwards above the existing two-storey outrigger to the rear of the property. There would also be the installation of two rooflights in the front roof slope of the property.
4. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for those classes of development defined as permitted development in Schedule 2. The LPA's decision notice indicates that it has considered the development principally under Class A of Part 1 of Schedule 2 which sets out that the enlargement, improvement or other alteration of a dwellinghouse is permitted development subject to the limitation set out under paragraph A.1.
5. It is clear that the development would not meet several of the limitations under paragraph A.1. As a roof extension, the eaves of the extension would clearly exceed the height of the eaves of the existing dwellinghouse, in conflict with A.1(d). In addition, the enlarged part would be within 2m of the boundary of the curtilage of the dwellinghouse and the eaves would exceed 3m. Thus, the

- development would fail to accord with A.1(i). As a result, the development would not be permitted development under Class A.
6. Class B of Part 1 of Schedule 2 to the GPDO deems the enlargement of a dwellinghouse consisting of an addition or alteration to its roof to be permitted development. The LPA argues that the proposal would constitute a second floor extension and would not therefore fall within the parameters of Class B. However, the proposal would involve extending the existing dormer, which in itself is an addition to the roof of the property, rearwards above the flat roof of the existing rear extension. It therefore seems to me that the proposal would constitute an enlargement of the dwellinghouse consisting of an addition to its roof. The proposal is not reliant on an upward extension of the rear extension to facilitate it. The roof of the rear extension is broadly level with the eaves of the main roof. All of the development could therefore take place at roof level. I thus conclude that the proposal falls to be considered under Class B, albeit it must also adhere to the limitations under paragraph B.1 to be permitted development.
 7. Paragraph B.1(d) states that the enlargement under Class B is not permitted development if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terraced house.
 8. The appellant states that the entire loft extension would fall below the 40 cubic metre limit. The proposed volumetric calculations show that the cubic content of the existing dormer amounts to 14.5m³ whilst the cubic content of the proposed extension would be 13.6m³. Added to the cubic content of the proposed front rooflights, the total volume of additions would amount to 28.4m³. I have no conflicting evidence to suggest the appellant's figures are not accurate.
 9. The LPA does not dispute that the proposal would fail to meet any other limitations under Paragraph B.1. I am satisfied that the proposal would not fail to meet any the limitations under B.1. Likewise, I consider that the development would meet the conditions set out under paragraph B.2. As a result, the proposed box dormer extension to a loft bedroom would be permitted development under Class B of Part 1 of Schedule 2 of the GPDO. Consequently, it would be granted planning permission by Article 3(1) of the GPDO at the date the LDC application was made.
 10. The proposed roof lights to the front roof of the slope would fall to be considered under Class C of Part 1 which defines any other alteration to the roof of a dwellinghouse as permitted development subject to the limitations under C.1.
 11. It is proposed to install an additional two rooflights in the front roof slope of the property. The proposed volume calculations show the rooflights would be 0.15m in depth with a width of 0.8m and a length of 0.8m. The rooflights would not fail to meet any of the limitations set out under paragraph C.1. Indeed, the LPA does not seek to argue as such. As a consequence, the rooflights would also have been permitted development and granted planning permission by Article 3(1) of the GPDO at the date the LDC application was made.

12. For the reasons set out above, I conclude that the proposed box dormer extension to a loft bedroom and additional rooflights in the main roof would have been lawful at the date the LDC application was made.

Conclusions

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 box dormer extension to a loft bedroom and additional rooflights in the main roof 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.

J Whitfield

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 17 March 2022 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 box dormer extension to a loft bedroom and additional rooflights in the main roof would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) order 2015.

Signed

J Whitfield

Inspector

Date: 15 May 2023

Reference: APP/U5930/X/22/3301710

First Schedule

Box dormer extension to a loft bedroom and additional rooflights in the main roof.

Second Schedule

Land at 86 Acacia Road, Walthamstow E17 8BW

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: 15 May 2023

by **J Whitfield BA (Hons) DipTP MRTPI**

Land at: 86 Acacia Road, Walthamstow E17 8BW

Reference: APP/U5930/X/22/3301710

Scale: Not to scale

