



Appeal Decision

Site visit made on 16 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/Y5420/X/22/3300249

2 Hermiston Avenue, Hornsey, Haringey, London N8 8NL

- 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 Dr Taf Aziz against the decision of the Council of the London Borough of Haringey.
 - The application ref HGY/2022/0702, dated 17 February 2022, was refused by notice dated 14 April 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 the construction of a loft conversion involving partial hip-to gable, including rear dormer and No.3 front Velux windows and No.1. side bathroom window, with two Juliet balconies on rear face of dormer.
-

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.

Main Issue

2. The main issue of the appeal is whether the Council's deemed refusal to grant a LDC was well-founded.

Reasons

3. An application under S192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
4. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
5. The appellant submitted the application on the basis that the proposed development would be permitted by Classes B and C of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO'). However, the appellant appears to

¹ Town and Country Planning Act 1990 (as amended)

have advanced their appeal case based on the planning merits of the appeal scheme and describes the application as seeking planning permission.

6. The application submitted was for a Lawful Development Certificate for a Proposed Use or Development (an LDC). Although an email from an officer of the Council also appears to discuss the planning merits of the scheme, it is clear from the Council's decision notice that they have dealt with the application on the basis that it is an application for an LDC. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
7. Class B of Part 1, Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof and Class C permits any other alteration to the roof of a dwellinghouse, subject to certain conditions and limitations. Paragraph B.1.(c) sets out that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
8. The Council refused the application on the basis that the roof alteration would extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. It is not disputed that the proposal would meet other limitations set out in the GPDO. Whether the proposed development would comply with the limitations of the GPDO, and therefore be lawful development, will turn on whether the principal elevation of the dwellinghouse is the elevation fronting onto Hermiston Avenue or not.
9. The Permitted development rights for householders: Technical Guidance (2019) defines the 'Principal elevation' in most cases as that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
10. I note that the appellant refers to the elevation facing Lightfoot Road in their Final Comments as the 'principal elevation'. However, I consider it likely this reflects the language used by the Council rather than an acceptance that the Council's case should succeed. Indeed, the appellant refers to the elevation fronting onto Hermiston Avenue as the 'front elevation' and the elevation fronting onto Lightfoot Road as the 'side elevation' in their submitted plans. I shall therefore go on to consider whether the elevation fronting onto Hermiston Avenue is the principal elevation of the dwellinghouse or not.
11. The appeal building comprises a terraced dwelling which is located at the end of a series of similarly designed dwellings fronting onto Hermiston Avenue. The dwellings typically comprise a bay window and front door with ornate porch to the ground floor and three windows to the first floor. The appeal dwelling has two bay windows on the ground floor and four windows on the first floor which face towards Hermiston Avenue. Dwellings at the end of the terrace, including the appeal dwelling, have a gable feature which faces towards Hermiston Avenue, further emphasising the importance of this elevation.

12. While the ornate porch and front door to No 2 is located in the elevation fronting onto Lightfoot Road, there are limited architectural features in this elevation. Windows are modest in size and obscure glazed, without the level of symmetry evident on the elevation fronting onto Hermiston Avenue. I consider it unlikely it would be understood to be the front of the house. In my view, although it does not contain the front door, given the architectural features present in the elevation facing towards Hermiston Avenue, it constitutes the principal elevation of the dwellinghouse.
13. The appellant has drawn my attention to an LDC application reference No HGY/2019/0189 at 11 Hermiston Avenue, which confirmed the formation of a rear dormer, including the insertion of an additional 2 front rooflights, would be permitted development. Although not identical to the appeal property, it is a corner property which fronts onto Hermiston Avenue, with its front door located in the side elevation fronting onto Rokesley Avenue.
14. I note the Council has assessed the application on the basis that the enlarged part of the dwellinghouse would not extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway, meaning the Council considered, in that case, the elevation fronting onto Hermiston Avenue was the principal elevation. Given the similarities between the two properties, it is not clear why the Council has taken a different view in respect of the appeal site, and I see no reason to take a different view in this case.
15. Since I have found the elevation facing Hermiston Avenue to be the principal elevation, the appeal scheme would not extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. I have no evidence to show that the dwelling would fail to meet any other limitation under Class B or Class C and so find, on the balance of probabilities, the development would be permitted by Class B and Class C of the GPDO.

Conclusion

16. 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 construction of loft conversion involving partial hip-to gable, including rear dormer and No.3 front Velux windows and No1. side bathroom window, with two Juliet balconies on rear face of 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.

M.Savage

INSPECTOR



Plan

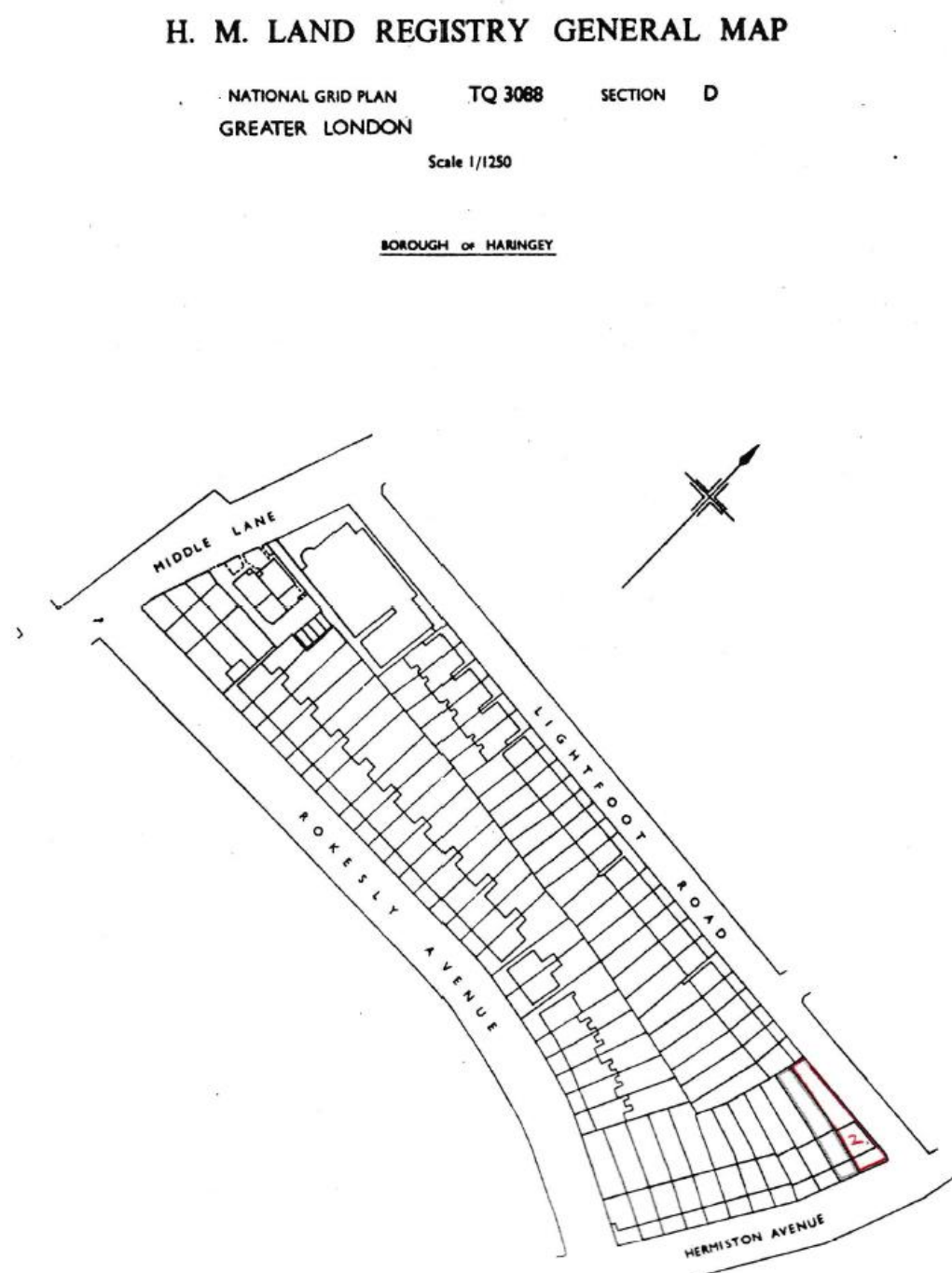
This is the plan referred to in the Lawful Development Certificate dated: 21 June 2023

by **M Savage BSc (Hons) MCD MRTPI**

Land at: 2 Hermiston Avenue, Hornsey, Haringey, London N8 8NL

Reference: APP/Y5420/X/22/3300249

Scale: Not to Scale



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 February 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 building operations would be development which is permitted under the provisions of Class B and Class C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

M.Savage
Inspector

Date: 21 June 2023

Reference: APP/Y5420/X/22/3300249

First Schedule

Construction of loft conversion involving partial hip-to gable, including rear dormer and No.3 front Velux windows and No1. side bathroom window, with two Juliet balconies on rear face of dormer, as shown on drawings 4/7, 5/7, 6/7 and 7/7.

Second Schedule

2 Hermiston Avenue, Hornsey, Haringey, London N8 8NL

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.